

Governor's Task Force on **Regulatory Reform** Final Report

**Washington State
Office of Financial
Management**



**Submitted
December 20, 1994**

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We the members of the Governor's Task Force on Regulatory Reform respectfully submit this report for the full consideration of the Legislature. We are proud of the hard work and long hours that we have volunteered in this effort. We are pleased to present this report which includes important recommendations that will ease the regulatory burden placed on our state's citizens. We also recognize that the goals of regulatory reform will not be achieved overnight. The Task Force considered many ideas, however, time constraints limited our ability to fully consider all of the proposals. Our interim report and the records of the subcommittees are evidence that many such ideas were considered. As part of this report, we recommend that the Legislature also consider issues addressed in the interim report. We are optimistic that the Governor and the Legislature will work together to address these issues and others necessary to achieve true regulatory reform.

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Volume I

Task Force Recommendations

I. Introduction

Governor Lowry created the Governor's Task Force on Regulatory Reform in August, 1993, through Executive Order EO 93-06. Charged with finding ways of simplifying the state's increasingly complex and sometimes overlapping rules and regulations, the 21-member task force was guided throughout its study by the views and concerns of hundreds of Washington's citizens.

The panel looked for ways to make state regulations more reasonable and easier to understand. They considered options for better coordinating the regulatory process so that people don't have to retrace their steps for different agencies. And they looked for ways to make the regulatory system more cost-effective.

The result is a set of recommendations that balances a critical need to protect our state's environment and the health and safety of its citizens with respect for the concerns of the businessmen and women who abide by those rules. Ultimately, true regulatory reform will not only provide for the coexistence of vital protections and a robust economy, it also will untangle the web of rules and regulations that carry us there.

Specific objectives the Task Force was asked to address include:

- Linking growth management processes and environmental review requirements in a way that fosters environmental protection, planned growth, and sustained economic development.
- Better coordination of regulatory actions within agencies, between agencies and among various government bodies.
- Improving the permit approval process without undercutting environmental protections.
- Considering changes in the state's Administrative Procedures Act or related statutes to encourage more reasonable, efficient, timely, cost-effective and coordinated rule-making and adjudication.

The Task Force considered many ideas brought by the members of the Task Force, interested groups representing business, consumer groups, and environmental and labor organizations. Many individuals participated actively in the work of the Task Force, attending public meetings and offering suggestions. The Task Force discussed many issues, however time constraints limited addressing all of these proposals. This report summarizes our contribution to this broad issue, but we hope that discussions revolving around improving the regulatory system will continue.

A. Task Force Interim Report

In December, 1993, the Task Force released its interim report to the governor, focusing on issues that could be resolved in time for the 1994 legislative session. Much of the group's early effort was designed to lay the groundwork for long-term solutions, eventually paving the way toward final recommendations.

Initial recommendations included:

- Ensuring that state agencies and the Legislature are made aware of the likely effects of regulatory decisions.
- Reducing paperwork and providing people with more technical assistance.
- Simplifying the appeals process for decisions made under the state's Growth Management Act (GMA) and the State Environmental Policy Act (SEPA).
- Exempting cleanup operations that fall under the Model Toxics Control Act from the procedural requirements of other state environmental laws.
- Strengthening legislative oversight of new rules and setting up guidelines to review existing rules.
- Encouraging more specific legislative guidance on existing policies.

(The Task Force's interim recommendations are summarized in Appendix A. The full text of the Task Force's Interim Report is available from the Task Force office.)

Parts of the interim report were introduced as legislation during the 1994 session, and on April 1, 1994, Governor Lowry signed into law SB 6339 and HB 2510 (partial veto). (Appendix B summarizes the 1994 legislation and the governor's veto message)

B. 1994 Legislation

The law provided for the following improvements.

1. Changes in Administrative Procedures

- Prior to final adoption of a rule, an agency must prepare a written summary of all comments received on the proposed rule, and must substantively respond to those comments.
- Agencies must file a notice of intent to begin rule-making at the beginning of the rule adoption process, and must use alternative forms of rule-making -- such as negotiated rule-making, pilot rule-making and other alternative procedures -- in the rule development process.
- A lower threshold for deciding when small business impact statements are required means that agencies must analyze small business impacts on more rules.
- Joint Administrative Rules Review Committee (JARRC), the legislative committee that oversees agency rule-making, may now determine that an agency rule does not conform with legislative intent or that it violates procedural requirements.

2. Changes to Environmental and Land Use Law

- Local governments must set time periods for action on permit applications, and must notify an applicant within 20 working days whether an application is complete and, if not, what is necessary to complete the application.
- Local governments may authorize the direct appeal of SEPA procedural decisions to superior court, saving time and expediting appeals.
- Growth Management Hearings Boards can use more hearing examiners.
- SEPA appeals on comprehensive plans and development regulations must be filed within 60 days after a plan or regulation is adopted. Growth Management Hearings Boards can now hear these appeals.
- Actions taken under the Model Toxics Control Act do not have to meet the procedural requirements of other state environmental statutes. The substantive provisions of those statutes still apply.

In June 1994, the governor issued an executive order aimed at fulfilling other recommendations of the Task Force and furthering his initial goals. (Appendix C)

C. 1994 Task Force Activities

Following its initial set of recommendations, the Task Force created three subcommittees to work on specific issues.

- The SEPA/Growth Management Subcommittee looked at ways of linking SEPA, GMA, the Shoreline Management Act and other land use and environmental laws, and also explored ways of better integrating the environmental review process and the development permit process.
- The Alternative Approaches Subcommittee examined technical assistance needs and ways of ensuring voluntary compliance with rules. This panel also looked at the possibility of certifying non-governmental professionals to help ensure compliance with various rules.
- The Rules Review Subcommittee created a plan for reviewing existing rules and a simplified process for repealing outdated rules.

Public Involvement

The Task Force made every effort to solicit the opinions and ideas of interested parties. Initially inviting experts to address the group, the panel later heard hours of testimony from those on the front lines of the state's regulatory system: the public. At every Task Force meeting, time was set aside for people to share personal tales of navigating the regulatory maze and offer suggestions for improving the system.

In addition, each Task Force subcommittee enlisted the help of numerous interest groups. The Rules Review Subcommittee held four public hearings around the state to discuss rules that had seemed particularly difficult to carry out. The subcommittee also sent questionnaires to thousands of people. A summary of those responses is included in section IV.

Once each of the subcommittees had completed draft recommendations, the Task Force held five more public hearings around the state. The greatest number of responses concerned the SEPA/GMA portions of the recommendations. The Task Force subcommittees, particularly the SEPA/GMA group, considered and incorporated many of the changes suggested by those who testified. A summary of public comments is included in Appendix D.

The Task Force and its subcommittees benefited from the skills and talents of numerous people during the course of this study. Literally hundreds of people representing a wide range of interested groups were actively involved in developing recommendations that are presented in this report. They were critical to the completion of this work and the Task Force would like to express its gratitude for the time and effort made by everyone involved.

D. Summary of Final Recommendations

1. Land Use Planning and Environmental Policies

The Task Force is recommending changes to the land use planning and permitting process. The recommendations are the first step toward a planning, permitting, and environmental process that will maintain and enhance the state's environmental quality while allowing development to occur more efficiently. The Task Force's recommendations include:

- Combining land use planning and environmental review and providing funding to local governments to do this work.
- Providing more legislative guidance to local governments as they protect critical areas.
- Allowing development proposals to rely on comprehensive plans and development regulations to provide mitigation for specific environmental impacts. Additional environmental review and mitigation would only be required to the extent these tools are inadequate to address site specific issues or were not addressed in the comprehensive plans and development regulations.
- Requiring local governments planning under GMA to develop consolidated permit processes and establishing a maximum period of 120 days after a complete application is filed for a local government planning under GMA to make a final permit decision.
- Requiring the state to provide a consolidated permit process.
- Requiring the Shorelines Hearings Board to issue decisions within 180 days.
- Simplifying the procedures governing judicial review of local government land use decisions.
- Establishing a study commission to review the effect of the Task Force recommendations and examine additional improvements.

2. Alternative Regulatory Approaches

The Task Force is recommending several changes to the way the state conducts its regulatory activities. The recommendations will allow state agencies to focus on the most important

problems without sacrificing public health or safety. The Task Force's recommendations include:

- Requiring state agencies to provide technical assistance to help people comply with regulations. The Departments of Ecology and Labor and Industries will provide technical assistance before issuing penalties. The Departments of Revenue, Labor and Industries, and Employment Security will use targeted education efforts and other similar programs to help people comply with tax and premium payments programs.
- Creating a process within the Department of Labor and Industries that would allow certified non-governmental professionals to verify code compliance for some projects. The state Board for Registration of Professional Engineers and Surveyors would identify applicable inspections and compliance programs within their jurisdictions.
- Simplifying the use of alternative rule adoption processes, such as negotiated rule-making and pilot rules.
- Extending the use of alternative dispute resolution to resolve inter-agency disputes and rule adoption disputes.

3. Rules Review

The Task Force is recommending changes to the rule adoption process that will address some of the most common complaints about the regulatory process. These recommendations strike a careful balance that will require agencies to more carefully consider significant rules they adopt while allowing them sufficient flexibility to make the decisions they need to make. The Task Force's recommendations include:

- Creating a new set of factors to be used by major agencies requiring a detailed analysis of the need for and impact of significant legislative rules. Agencies affected would be Labor and Industries, Ecology, Employment Security, Revenue, and Fish and Wildlife. Rules of other agencies could be nominated by JARRC for the more detailed analysis. Agencies may require other rules to be analyzed under these provisions.
- Developing a clear, consistent mechanism that would allow a business or individual to ask an agency to review an existing rule that may be outdated, ineffective or duplicative. An agency's response could be reviewed by the governor.
- Simplifying the process for repealing outdated rules and for adopting or amending minor or insignificant rules.

II. SEPA and Land Use Procedure Reform

A. Background

During the past 20 years, most environmental analysis of land use decisions has fallen under the State Environmental Policy Act. In the early 1990s, the state's Growth Management Act raised expectations that land use planning and environmental review could perhaps go hand-in-hand. Unfortunately, GMA has proven more difficult to implement than its proponents had anticipated. Local governments have spent countless hours trying to create comprehensive plans and development rules.

Improvements to the land use planning system will take time. However, these recommendations offer an important first step toward a more unified land use planning system; one that treats environmental review as part of the planning process.

This section summarizes a larger, separate report, titled Volume II - SEPA and Land Use Reform. That report is also part of the Task Force's final recommendations. Legislation implementing these recommendations will be available in early January.

B. Recommendations

- **Integrated Land Use Planning and Environmental Review.** Local governments planning under the GMA should make environmental review a key component of the land use planning process.
- **Legislative Policies and Goals for Development Regulations Protecting Critical Areas.** The GMA requires all cities and counties to designate and protect critical areas, including wetlands, aquifer recharge areas, frequently flooded areas, steep slopes, and fish and wildlife habitat. Because of the state's interest in protecting these critical areas, the Task Force believes the GMA should provide more specific policy direction to local governments and to the Growth Management Hearings Boards.
- **Development Regulations and Environmental Review.** Many local governments have adopted development regulations that provide for environmental review and mitigation. An applicant for a project that complies with these development regulations should not be required to duplicate environmental review or to provide additional mitigation under SEPA if these same environmental impacts are adequately addressed by the development regulations or by the applicable comprehensive plan policies.
- **Funding for Integrated GMA Planning and Environmental Review.** Project applicants currently pay for most of the environmental review costs connected with development activity. However, a more integrated land use planning and environmental review process will require local governments to pay for environmental review costs even before projects have been identified. Local governments will need a source of funds to pay these expenses and a means of being reimbursed for money already spent. A state revolving loan fund should be set up to provide a reliable funding source. Local governments should be given

authority to assess a fee on each project applicant to recover the costs of a review that benefits the applicant.

- **Enhanced Public Participation.** Local governments should encourage public participation in the planning and decision-making process through a variety of innovative techniques.
- **Integration of the SMA and the GMA.** The Shoreline Management Act (SMA) is a specialized land use planning statute that is not referenced in the GMA. To better integrate these two policies, the planning portions of local government shoreline master programs should be brought into the comprehensive plans adopted under GMA. The shoreline program would be a separate element of the plan. Development regulations adopted under the SMA also would be incorporated into and made consistent with the development regulations adopted under GMA. Because of the state's interest in shorelines, the state Department of Ecology would continue to review and approve the shoreline programs. The permitting process for substantial development permits covered by the SMA also would be modified to coordinate with the consolidated local government permit process.
- **Consolidated Local Permit Process.** Local governments planning under the GMA should have a consolidated permit procedure and environmental review should be integrated with project review. Currently, different types of local government permits require different procedures, each with its own timelines and hearing and notice rules. In addition, numerous opportunities exist for appeal of local government permit decisions. All reviews, hearings, and decisions on a permit application should be consolidated into a single process. At the option of a local government, hearing examiner decisions should be appealable directly to court. Finally, local governments should generally make a final decision on a development permit application within 120 after the application is complete.
- **Coordinated State Permit Procedure.** A state permit coordination process should be established to replace the existing statute. Under this procedure, an applicant for state permits would apply to the Department of Ecology for permit coordination. Ecology, or another more appropriate lead agency, would actively manage state permit responsibilities, but would not have the authority to make decisions for other state agencies. The lead agency would convene a meeting between the applicant and the agencies with permit responsibilities and establish a workplan. A state agency that fails to meet the agreed-upon deadlines would have to reimburse any fees paid by the applicant to that agency. If local government permits are involved and the applicant asks the local government to join the process, the state agencies will be required to coordinate their process with the local government process. The applicant will be required to pay the lead agency's costs in coordinating the permit process.
- **Judicial Review Reform.** The statutes governing the appeal of local government land use decisions must be clarified. Currently, much confusion and uncertainty surround the appeals process, with many opportunities for mistakes. All appeals of the local government decision should be consolidated into a single appeal proceeding of the local government decision. Reasonable attorney's fees should be awarded to the prevailing party at the Court of Appeals or Supreme Court if the party also was the prevailing party at the local government level and on superior court review.

- **Shorelines Hearings Board Reform.** The Shorelines Hearings Board should issue its decisions within 180 days.
- **Study.** To continue the momentum which has developed for reforming and improving the state's environmental and land use statutes, the 1995 Legislature should establish a task force to focus on these issues. The task force also should evaluate the implementation of the GMA and the effectiveness of the Regulatory Reform Task Force's reforms, and explore the need for a state land use code.

III. Alternative Regulatory Approaches

A. Maximizing Voluntary Compliance

Background

State agencies regulate businesses and individuals for a wide range of public purposes. Unfortunately, many of those at the receiving end of these regulations see the rules as little more than something that "happens to" them -- with swift penalties if they fail to comply. All the while, the state's laws and regulations are becoming more numerous and complex, and often more confusing.

Easing the adversarial nature of regulation was a key goal of the Task Force. One suggestion calls for more education and technical assistance as a way of encouraging voluntary compliance with laws and regulations. Penalties would generally be reserved for more serious or repeated violations, as well as to assure that those who voluntarily comply with the law are not placed at a competitive disadvantage.

The underlying premise of this idea is that most businesses and individuals will take action to comply with agency regulations if they are aware of and understand what they are required to do. Washington's citizens and businesses place a high value on preserving the quality of life in this state. Conflict about regulation and enforcement can be reduced and the effectiveness and efficiency of regulation can be increased if, for less serious violations, agencies will explain the nature of any deficiencies, provide technical assistance on how to comply, and allow a reasonable period of time to correct the violations. This emphasis on education and technical assistance should be expanded throughout state agencies.

A prime example of success is the state Department of Ecology's "Shopsweeps" program -- a voluntary program that provided technical assistance on the proper management of hazardous wastes in automotive repair shops. In cooperation with the industry, Shopsweeps representatives visited more than 1700 shops during 1992 and 1993. The visits averaged 45 minutes each, compared to about 60 hours required for formal hazardous waste inspections. Revisits to a random sample of shops showed that 97% had complied or tried to comply with at least one recommendation made during the first visit. Of all recommendations made during the visits, 61% had been complied with by the shops.

The following chart details some of the state's current levels of technical assistance and imposed penalties for four state agencies. Significant agency resources are devoted to these activities,

with many points of contact between the agencies and those they regulate. Many of these contacts are focused on assisting with voluntary compliance, but also include involuntary inspections, investigations and audits.

CURRENT TECHNICAL ASSISTANCE PROGRAMS INDIVIDUALS/BUSINESSES REGULATED

<u>Agency</u>		<u>Number</u>
Ecology	Wastewater Discharge	2,932
	Air Emission Sources	7,366
	Agricultural Burning Sources	5,453
	Dangerous Waste Generators/Handlers	18,600
	Underground Storage Tanks	13,338
	Contaminated Sites	5,300
	Well Drillers	1,350
Labor and Industries	Industrial Insurance and Worker Health and Safety	150,000
Revenue	Registered Business Taxpayers	420,000
Employment Security	Registered Employers	155,000

COMPLIANCE ASSISTANCE ACTIVITIES

<u>Agency</u>	<u>Assistance Activity</u>	<u>Number</u>	<u>Resources</u>
Ecology (FY 93)	Technical Assistance Site Visits	5,334	35 FTEs
	Workshops and Conferences	360	16 FTEs
	Targeted Assistance Campaigns	75	20 FTEs
	Telephone Hotline Assistance	136,270	9 FTEs
	Technical Assistance Publications	375	14 FTEs
	Letter/Telephone Assistance	123,730	62 FTEs
Labor and Industries (FY 94)	Safety/Health Site Consultations	1,600	36 FTEs
	Private/Public Health Consults	288	
	Private/Public Safety Consults	551	
	Workshops	154	43 FTEs
	Off-Site Assistance (e.g. mail/phone)	8,392	
Revenue	Taxpayer Services Division - Various services including targeted information campaigns, publications, direct responses to inquiries by information specialists, telephone service center, and speakers bureau. FY 94-95 division budget is \$5,221,969.		
	Field Office Taxpayer Services		27 FTEs
	Education/Assistance by Tax Officers		23 FTEs
Employment Security	Employer education activities include: 20 UBI training workshops each year, information packets for new employers, informational mailings, providing speakers for business meetings, and training workshops conducted jointly with the IRS. No data on the resources devoted to these activities is currently available.		

COMPLIANCE INSPECTION/AUDIT AND ADMINISTRATIVE PENALTY ACTIVITIES

<u>Agency</u>	<u>Activity</u>	<u>Number</u>
Ecology (FY 93)	Inspections (many also include assistance)	8,391
	Complaint Responses	7,923
	Administrative Penalties Issued	105
Labor and Industries (FY 93)	Elevator Inspections	6,300
	Construction Inspections	26,210
	Electrical Inspections	232,000
	Plumber Inspections	3,067
	Boiler Inspections	21,425
	Enforcement/Insurance Collection Audits (FY 94)	2,000
	WISHA Health/Safety Inspections	5,400
	WISHA H/S Inspections with Violations	4,964
	WISHA H/S Inspections Resulting in Penalties	2,252
	Violations Cited from WISHA H/S Inspections	13,683
	WISHA H/S Violations with Penalties Assessed	4,940
Revenue	Field Office Tax Discovery/Compliance Officers	118
	Field Auditors (In State)	215
	Business Tax Audits (FY 94)	9,000
	Combined Excise Tax Returns (FY 93)	1.6 million
	Excise Tax Return Penalties (most self-assessed)	112,000
	Excise Tax Return Penalties Waived (on request)	7,500
Employment Security (FY 94)	Employer Audits	3,028
	Number of Audits Resulting in Tax Increase	578
	Number of Audits Resulting in Tax Credit	374
	Penalties Assessed Resulting from Audits	\$67,219
	Total Penalty Waivers Allowed/All Taxes	\$353,442

1. *Recommendation 1*

- **State agencies should provide education and technical assistance to increase voluntary compliance.** Agencies with regulatory enforcement authority should maximize voluntary compliance by offering technical assistance, which includes:
 1. information on the laws, rules, compliance methods and technologies applicable to the agency's programs;
 2. information on ways to avoid compliance problems;
 3. assistance in applying for permits; and
 4. information on the mission, goals, and objectives of the program.

A technical assistance visit is defined as one that is either requested by a business or individual needing help, or one that is declared by the agency at the beginning of the visit to be a technical assistance visit (rather than an inspection or audit). During a technical assistance visit, the

agency should inform the individual or business of any violations of law or rules, and should provide help with compliance.

Following the visit, the individual or business should have a reasonable period of time to correct any violations before being penalized. An agency may then revisit a facility and issue penalties for uncorrected violations.

An agency should be able to take immediate enforcement action if one of the following circumstances exists during any technical assistance visit:

1. The individual or business has previously been penalized for the same violation, or has been given notice of the violation in a prior technical assistance visit.
2. The individual or business fails to remit previously-collected sales taxes to the state.
3. The violation has a probability of placing a person in danger of death or bodily harm; has a probability of causing more than minor environmental harm; or has a probability of causing substantial physical damage to the property of another.

2. Recommendation 2

- **The Departments of Ecology and Labor and Industries should provide technical assistance before issuing penalties.** Although the agencies must retain enforcement options for serious or repeated violations, an agency's potential for imposing administrative penalties should not inhibit requests for technical assistance or limit its ability to provide technical assistance. This recommendation does not waive the need for compliance with the underlying regulation.

Notice . If Ecology, during an inspection, or Labor and Industries, following a work place safety and health consultative visit, becomes aware of conditions that are not in compliance with laws and regulations enforced by the department, the agency should issue a statement to the responsible party including at least the following information:

1. a clear description of the condition that is out of compliance, along with a specific reference to the applicable law or regulation;
2. a clear statement of what is required to achieve compliance;
3. the date by which the department will require compliance to be achieved;
4. information on where to go for technical assistance; and
5. notice of when, where, and to whom a request to extend the time to achieve compliance may be filed.

Ecology's statement would be called a notice of correction, while Labor and Industries' information would be included in the consultative report. The Ecology notice should not be considered a formal enforcement action, and should not be subject to appeal. Ecology should not be required to issue a notice of correction during a technical assistance visit. Labor and Industries must provide a copy of the consultative report to the business owner, who should then make it available to the business's employees.

Penalties. Ecology may impose an administrative penalty before issuing a notice of correction and without allowing a reasonable time to achieve compliance under any of the following circumstances:

1. The person has previously been penalized for the same violation.
2. The deadline for compliance with a previously-issued notice of correction has passed. (Ecology must have responded to any request for a review of the date by reaffirming the original date or by naming a new date).
3. The violation has a probability of placing a person in danger of death or bodily harm, has a probability of causing more than minor environmental harm, or has a probability of causing physical damage to the property of others in an amount exceeding one thousand dollars.

The Department of Labor and Industries, following a work place safety and health compliance inspection, must issue a citation for violations of industrial safety and health standards. The department should not assess a penalty during these visits if the violations:

1. are determined not to be of a serious nature;
2. have not been previously cited following a compliance inspection;
3. are not willful; or
4. do not have a mandatory penalty under state law.

Time for Compliance. An individual or business that receives a notice of correction must have a reasonable amount of time to achieve compliance. Individuals and businesses that receive a notice of correction may request an extension of time to achieve compliance.

3. Recommendation 3

- **Targeted education efforts and voluntary compliance programs should be used by some agencies to achieve compliance with tax and premium payments programs.** The state departments of Revenue, Employment Security, and Labor and Industries should review their policies concerning penalties and waivers for consistency and effectiveness. These agencies should:
 1. Set up educational programs directed at those who appear to have the most difficulty determining their tax or premium liability. The programs should include targeted fact sheets, workshops, and information on self-audits. Departments should consider presenting material in conjunction with other agencies.
 2. Develop and administer a pilot program for voluntary audits. Businesses should be able to request voluntary audits. No penalties should be assessed against program participants unless the agency determines that either a good faith effort to comply has not been made or the taxpayer has failed to remit previously-collected sales taxes to the state. The person conducting the voluntary audit should provide an audit report describing errors or omissions, along with future reporting instructions. This program would not relieve a business from past

or future tax or premium obligations. (L&I's program would be limited to industrial insurance.)

3. Review its assessed penalties to determine if they are internally consistent and whether they provide for waivers in certain circumstances. Each department should report the results of its review to the Legislature no later than December 1, 1995.

4. Recommendation 4

- **The legislation to maximize voluntary compliance should require that its provisions take effect as soon as possible.**

5. Recommendation 5

- **Washington state's commitment to these educational and technical assistance programs should be advocated as a national model.** This approach should not jeopardize the state's ability to administer or benefit from federal programs.

Legislation implementing these recommendations is included in Appendix E.

B. Market Incentives

Background

Creating alternatives to the traditional "command and control" approach to regulation was another goal of the Task Force. All too often, this conventional view turns simple regulations into ever-changing catalogs of detail that are costly to develop and administer, difficult to evaluate, and confusing to those for whom the rules apply. Also, this approach often creates situations where following the rules takes precedence over solving real problems. Prescriptive regulations also tend to foster an adversarial relationship between state government and the regulated community.

Possible alternatives to the command and control approach include the use of market incentives, outcome-based regulations, voluntary compliance and technical assistance programs (legislation implementing the last points is included in Appendix E). A number of state agencies have already enacted positive alternatives. On the federal level, success stories include environmental programs such as 33/50 and Green Light which have greatly curtailed business-related strains on the environment without the costly overhead of prescriptive regulations.

Successful alternatives demand that regulators work with those who are to be regulated as a way of developing measurable performance goals and a plan for achieving them.

1. Recommendation

- **The state should foster alternative approaches to regulation.** Alternative forms of regulation include market incentives, outcome-based regulations, voluntary compliance, and

education. In practice, this recommendation could lead to a two-part state program charged with creating a design for alternative approaches and the setting it in motion.

Drafting state policy. A new high-ranking policy-making body would guide state efforts, coming up with a plan for regulatory alternatives and naming programs that should carry them out. One of two groups could fill the lead role:

1. **The Washington State Regulatory Incentives Council.** Housed in the state Office of Financial Management, this new group -- representing business, labor and the public -- would be appointed by the governor. At the direction of the council, public and private groups would design alternative plans that stress market incentives over prescriptive regulatory programs, focusing on ideas that would likely improve state government. Proposals must have measurable results. Promising plans would be funded through a program modeled after the federal Small Business Innovative Research Program. The council would report annually to the Legislature. Or:
2. **Washington Performance Partnership.** Created in 1994 to improve the efficiency of state government, the Washington Performance Partnership is responsible for setting policy (through its leadership council) and implementing those policies (through its operating committee). The Partnership's goal of designing a more efficient, "user-friendly" state government would be well served by efforts to develop alternative regulatory approaches. The panel's responsibilities could be expanded to include review of alternative ideas.

Putting those policies to work. Part two of the plan calls for setting up special groups in a few agencies that would actually make use of the new ideas. Some state agencies have already explored alternative regulatory approaches, and should be encouraged to continue their efforts. Other agencies would be added. An excellent example of this approach is the state's Clean Washington Center, which is located in the Department of Community, Trade, and Economic Development.

The center's mission is to boost demand for products made from recycled materials. As a result of the group's success in working *with* businesses, rather than imposing mandates, Washington state is one of the best markets for recyclable materials in the country -- better than some states that require manufacturers to use a certain percentage of recycled materials in their products. Other centers based on this model could be located in the Departments of Ecology and Labor and Industries.

C. Certification of Professionals in the Implementation of State Codes

1. Recommendation

The State Board for Registration of Professional Engineers and Surveyors in close coordination with the Washington Association of Building Officials (WABO), the International Council of Building Officials and other representatives of the municipal code compliance offices, should identify inspection and compliance programs for which professionals with appropriate qualifications could establish compliance with state and local requirements.

To ensure that private sector certification of compliance with the applicable state code for certain permits does not erode the flexible direction intended by certain policies and regulatory programs, discrete permit programs should be examined to determine suitability for certification. The board's responsibilities should be expanded to identify permit programs suitable for the certification program. Selection criteria could include:

1. Permits to be issued upon a finding of demonstrable compliance with specific and detailed codes, standards or other detailed prescriptive criteria;
2. Permits which impose specific and detailed performance standards;
3. Permitted actions which are measurable, auditable, and which can be corrected; and
4. Permits issued by a single authority. Implement the certification program described in this proposal.

The State Building Code, the Electrical Code, the Energy Code and the Mechanical Code are perhaps the best examples of existing codes that could immediately be brought within the certification program.

Codes or permits which are primarily intended to provide discretionary review of projects would probably not be immediate candidates for the certification program but should be re-examined periodically as experience and confidence in the program increase.

2. Discussion: Background

Many examples exist of areas of municipal review which may be suitable for review by certified professionals. For example, some areas of the building codes -- e.g., electrical, plumbing, Uniform Building Code (UBC) -- are reasonably clear and understandable and may be interpreted consistently by trained professionals. And when found to comply with the codes as a result of this process, building permits may be ministerially issued. Building designs are prepared by engineers and architects who are responsible for the application of sound scientific and engineering principles to design and construction tasks, as well as for compliance with building codes. Engineers and architects are licensed by the state, most often as the result of testing on their knowledge of scientific and engineering principles. The State Board for Registration of Professional Engineers and Surveyors is responsible for the testing and licensing of professional engineers and surveyors. The Washington Association of Building Officials, associated with the International Conference of Building Officials (ICBO), administers ICBO tests and certification of personnel. This is a voluntary certification program for code compliance competency for building inspectors, electrical inspectors, mechanical inspectors, combination inspectors, combination dwelling inspectors, and plans examiners. Some cities and counties contract with ICBO/WABO to conduct code compliance review on behalf of the jurisdiction. Simply stated, this proposal would authorize, through appropriate supervision, the private sector to contract for ICBO/WABO certified code compliance services and would require licensure or certification of all code compliance reviewers, both public and private.

Examples of Current Programs Using Professional Certification. The Federal Aviation Administration's (FAA's) chief mission and concern is the safety of the flying public. The

standards imposed by the FAA have been characterized as among the most complex, most dynamic, and most important to the public safety. Enforcement of these regulations is often, however, delegated to employees of private companies engaged in the manufacture or modification of aircraft as Design Engineer Representatives (DERs), Designated Aircraft Maintenance Inspectors (DAMIs) and Designated Manufacturing Inspection Representatives (DMIRs). Strict adherence to the regulations is maintained while allowing the private sector the flexibility and incentive to improve current safety knowledge. The permitting process is greatly enhanced and is more widely applied by the decentralization of enforcement while the public trust is maintained by the FAA in the form of an auditing, training and certification role.

Another current example of this type of professional certification is the code review and inspection program established to administer the Washington Energy Code, Non-Residential Energy code program. In many jurisdictions, administrative permit processes can be swamped by an increase in the volume of permit applications. Some departments have adopted ordinances which allow the developer to pay for an independent plan examiner who is secured by the jurisdiction on contract for the specific purpose of ensuring code compliance of the submitted proposal. This process expedites project review and allows expanded application of private sector expertise toward ensuring that the public safety is maintained.

Certification Program. The certification program would be a process separate from registration and licensing. Those functions would continue to be performed by the existing agencies and board. The responsibility of the existing State Board for Registration of Professional Engineers and Surveyors, however, should be expanded to include the certification program for private sector applicants and licensure for public sector applicants. Once a suitable permit program has been identified as a candidate for this certification/licensure program, certification and licensure of professionals could begin. The existing State Board of Registration of Professional Engineers and surveyors should be directed and authorized to design, establish and administer the licensure/certification program. The board should:

1. determine appropriate permit programs with which to begin the program;
2. identify the appropriate engineering, architectural or surveying disciplines;
3. design an appropriate test for certification, including professional ethics, but focusing on testing of candidates for their knowledge of the pertinent code;
4. establish a program for periodic recertification by testing or other substantially equivalent methods;
5. establish one or more panels, composed of one or more members of other professional registration boards, or other qualified, experienced and registered professionals appointed and assigned pro tem, to adjudicate disputes, appeals, and provide interpretations of code and regulations;
6. administer the certification program;
7. investigate and audit performance of certified professionals, as may be appropriate and required to assure compliance with the intent of the certification program and to protect the public interest; and

8. enforce the requirements of the certification program by investigation, hearing and adjudication of complaints and disputes and order imposing penalties, fines, restitution, suspension or loss of certification, or limitation of practice as may be appropriate. Authority to use the provisions of the Administration Procedures Act for Brief Adjudicatory Proceedings, RCW 34.05.482 and RCW 34.05.485 through 34.05.494, as presently adopted by WAC 196-24-041, should be granted to the Board. A procedure would also be established to provide rapid interpretation of disputed code provisions.

The Board would authorize and approve the appointment by ICBO/WABO of a Code Interpretations Officer. This person would be available for prompt and informal advice about disputed code provisions. If the parties were dissatisfied with the ICBO/WABO interpretation, the Board would be authorized to provide a second, and binding interpretation by appointment of a pro tem Board member, or by convening a panel of the Board. Appeals from the Board's ruling would go to Superior court. The Board's existing authority would also be expanded to allow it to add members on a temporary basis for particular proceedings and to form itself into, and act by, committees or panels.

Options

Because some permit applicants may choose not to use certified professionals or may desire agency review of their permit submittals, the certification program should be offered as an option to current permitting and plan review procedures, although governmental plan examiners should be required to be licensed. In cases where local governments serve as agents of the state for issuance of state permits, certification should be offered as an option to the local government. Licensure of local government staffs could assist in protecting the public interest by ensuring that the codes and rules of the state agencies were being applied in a consistent manner across jurisdictional boundaries to the greatest extent possible. Because of statutory definitions, "licensure" would be required of public personnel and "certification" would be required of private sector personnel; the program would be the same.

Public Assurance

To ensure that the public health and safety is the priority of the certified professional, the certification program should establish standards for, and authorize and direct the monitoring of, performance by certified professionals. Use of certified professionals should also be controlled to avoid manipulation by project applicants in a manner that may compromise the permitting agencies' public duty and regulatory responsibilities. As a first step, certified professionals should be required to obtain and maintain Errors and Omissions Insurance coverage in an appropriate amount. The existing statute of limitations of six years for construction, surveying and engineering services (RCW 4.16.300-320) should be applied to actions of certified professionals. Local governments should also be authorized to require certified professionals to provide them with a Public Agency Official's Bond, in an amount appropriate to the project certified. In addition to licensing requirements, certified professionals should be required to be recertified periodically, by testing or other substantially equivalent means.

3. Recommendation

State law would be changed to allow state agencies the authority to rely on national standards and external professional certifications where the integrity of state codes is not violated.

Background

Some state agencies are required to certify that certain items or goods meet state standards, which are sometimes identical to national standards. This means that regulated products which meet national standards must be reviewed/inspected by state agency personnel to assure compliance with state codes. National standards and consensus codes provide nationally recognized safety standards and form the foundation for state regulations yet state agencies do not always have the authority to accept national standards.

For example, the Department of Labor and Industries (L&I) must inspect and certify electrical panels, electrical vaults, and other equipment and products manufactured out-of-state, even if the plans, designs, manufacturing processes and final products meet national consensus codes. Although L&I uses standards that meet or exceed national codes, the department does not have the authority to accept certification that inspected products meet national codes as proof that the product satisfies state code requirements. These state reviews and inspections inflate cost, duplicate prior professional work and delay commercial activity, but do not result in enhanced protection for consumers or the general public.

Additionally, L&I often times finds itself required to review the plans associated with the construction or installation of products or equipment to insure compliance with state codes. Often this results in one certified professional who works for L&I reviewing the work of another external certified professional. Factory Assembled Structure plan review is one example.

The Department of Labor and Industries should be given the discretionary authority to rely on national consensus codes and external professional certification as proof that the design and/or manufacture of regulated items meets appropriate state standards. Proposed legislation to implement this recommendation is included in this report as Appendix F.

D. Alternative Rule-making

Senate Bill 5088, passed by the 1993 Legislature, encourages state agencies to come up with innovative ways of involving the public in rule-making. Mentioned specifically are "negotiated rule-making" and the "pilot rule" process. Negotiated rule-making, which recognizes the political nature of the regulatory process, uses alternative dispute resolution to produce rules that are supported by all concerned parties. Pilot rule-making is a term coined recently by the Department of Ecology. It simply means trying out a rule on a small scale to test its workability.

1. Negotiated rule-making

Background

Negotiated rule-making in Washington state is hindered by three obstacles: the reluctance of affected interests to participate; prescriptive statutory language that discourages agencies from using the process; and inadequate resources.

Recommendations

- **Repeal existing statutory language that describes negotiated rule-making.** (RCW 34.05.310), and add a brief definition that captures the essential characteristics of negotiated rule-making.
- **Gain experience with negotiated rule-making by using OFM guidelines. Do not now establish in statute a prescriptive framework for negotiated rule-making.**
- **Continue funding for alternative dispute resolution at the Office of Financial Management to help agencies and the public use negotiated rule-making more effectively.**
- **Help smaller agencies pay the higher cost of negotiated rule-making.**

Encouraging participation. Almost by definition, subjects of negotiated rule-making are controversial. The various parties usually lack a good working relationship. They may distrust the agency or be skeptical about the prospects of reaching agreement with their adversaries. A redefinition of negotiated rule-making would clarify that all parties share control over the process.

Federal and state experience with negotiated rule-making demonstrates that the following principles are essential to success:

1. The agency must be a party at the negotiating table; it doesn't just facilitate a consensus among the other participants.
2. The affected interests must be sufficiently identifiable so that they can be represented in the negotiations. If the interests are too diffuse, negotiated rule-making is not an appropriate process.
3. Each interest (and the agency) must be supportive of the process. An agency does not unilaterally decide to negotiate a rule, nor does a coalition of interests.
4. There must be flexibility. The agency and other parties in each negotiated rule-making must be able to design their own process for developing the rule.
5. The result is a proposed rule. However, if the process has been sufficiently inclusive, and if all interests and the agency can support the proposed rule, the proposed rule will in all likelihood become the final rule.

Prescriptive statutory language. The question of whether to prescribe procedures for negotiated rule-making in statute is one that several states and the federal government have been grappling with in recent years. So far only Montana has followed the federal lead and established a statutory framework for the process.

Washington has gone part way. Six subsections of RCW 34.05.310(2) set forth several procedures for negotiated rule-making, but omit others. Furthermore, several subsections could be read to contradict success factors embodied in the principles above: Subsection (iii) suggests that the agency controls the process and indeed can initiate a negotiated rule-making even if some stakeholders don't support negotiation. Subsections (i) and (ii) do not specify who "recognizes" the interests that can participate and who "authorizes" the spokespersons for such

recognized interests. In addition, subsection (v) raises a legal question about the extent to which an agency can bind itself to a particular rule. (See Appendix G for text of these subsections.)

The goal of Task Force members was to encourage agencies and stakeholders to use negotiated rule-making wherever the process is appropriate. However, rather than attempting to "fix" existing statute by adding more prescriptive language, the Task Force recommended replacing current language with a brief definition that captures the principles outlined above. If prescriptive statutory language becomes appropriate in the future, it can be added after Washington has learned more about the process.

Providing Adequate Resources. Resources that may be needed for negotiated rule-making include: education about what negotiated rule-making is; assistance with the convening of negotiations; facilitators to manage the process; and additional technical expertise in the subject of rule-making. The Office of Financial Management, through its Alternative Dispute Resolution Project, is meeting the first two needs, but will end June 30, 1995 unless funded by the Legislature.

The OFM Project is training state employees who could be "loaned" by one agency to assist with another agency's negotiated rule-making. In some situations, however, an independent facilitator may be needed to act as common staff; someone whom all parties can trust. Some agencies may have adequate budgets for this, but others, particularly smaller agencies, may not. It may be desirable to establish a fund to support negotiated rule-making in these circumstances. In some rule-makings, it also may be useful to have the assistance of an independent technical expert; someone who has the confidence of all parties to act as a kind of fact-finder. Agencies may lack the resources to hire such experts.

2. Pilot rule-making

Background

Pilot rule-making means simply testing the practicality of a rule. How well can the rule be administered and what are the costs? Is it feasible for regulated communities to comply with the rule?

Although pilot rule-making adds an extra step to rule development, it is a step that can identify problems before the rule is adopted on a larger scale. This saves time and money that would otherwise be spent on rule amendments. Pilot rule-making can be used in conjunction with other methods for involving the public, such as negotiated rule-making. It also can be used to improve existing rules.

Recommendation

Clarify the Administrative Procedures Act so that:

1. Pilot rule-making can occur at any time during the rule development process.
2. It is not necessary for all participants to reach consensus on all aspects of a pilot project, such as testing protocols.

3. Volunteers who agree to test a draft rule are not subject to enforcement actions if they are not able to comply.
4. A volunteer who agrees to test an existing rule can be relieved from enforcement actions if the agency determines that a waiver is in the public interest.
5. An agency may conduct a pilot rule process in lieu of meeting the SBEIS requirements of the regulatory fairness act, providing certain conditions are met.

(The full text of proposed statutory changes on pilot rule-making is in Appendix G)

IV. Rules Review

A. Background

The Rules Review Subcommittee was formed in response to concerns, expressed by members of the public, that some existing administrative rules are unnecessarily burdensome to those being asked to comply. Members of the Task Force received complaints that rules are, among other things:

1. Difficult to read or understand;
2. Written or implemented in a way that goes beyond the intent of the state or federal statutes or rules;
3. Implemented or enforced inconsistently, or in an arbitrary and capricious manner;
4. Duplicative of, inconsistent with, or in conflict with other state, federal or local rules or statutes;
5. Applied inequitably to public and private entities;
6. Excessively costly or outdated in the methods prescribed;
7. Not authorized, either because they had never had legal authority, or because the authorizing statute had since been repealed or amended;
8. No longer necessary.
9. Unduly burdensome when the requirements of several individual rules are taken together.

In reviewing these concerns, the Task Force agreed that it would not be sufficient to develop criteria only for the adoption of new rules. Criteria for the adoption of new rules were considered separately by the Task Force. To effect true regulatory reform, it is necessary to bring the existing body of rules into conformance with similar criteria over time.

The subcommittee identified three factors which constitute major hurdles to such reform. This report details the three major roadblocks which were identified, as well as the objectives and workplan developed by the subcommittee to address them.

1. Identifying rules requiring review

While complaints about rules are generally valid, many administrative rules ARE clearly written, necessary, authorized, and cost-effective. To effect a wholesale review, encompassing problematic rules as well as those which are generally supported, would put an enormous strain on agency and legislative resources. Regulatory reform should not result in the diversion of a disproportionate amount of agency resources to rule review at the expense of service provision, enforcement and other agency responsibilities. A rules review process should focus on rules which are specifically identified as problematic.

2. Developing a mechanism for requesting that a rule be reviewed

Existing state law provides limited means for members of the public to request review of a rule in order to prompt amendment or repeal of those which are no longer appropriate. The circumstances supporting the adoption or the implementation of a rule may change, but the rule itself may stay on the books indefinitely. The Administrative Procedures Act (APA) provides for a process (RCW 34.05.330) whereby any person may petition an agency to review a rule. However, the APA provides no guidelines for determining if a review is appropriate, no direction for petitioners to follow in submitting their concerns and no standards across agencies for the completeness of a review. Further, there is no provision for an objective third-party assessment of the agency's response.

In 1982 the legislature passed the Regulatory Fairness Act (Chapter 19.85 RCW), which included a requirement that each agency review all of its rules by June 10, 1992. Based on the subcommittee's telephone survey of rules coordinators in seven regulatory agencies, few agencies complied with this requirement. Of those that did, the process resulted in little change to the quality or quantity of existing rules. Furthermore, the process was a "one-time-shot," and did not institutionalize a regular or systematic review process within agencies. (One exception is the Department of Revenue, which reviews all of its rules in a five-year cycle.) This provision of the Regulatory Fairness Act was ineffective due to the lack of clear guidelines for agencies to use in determining the extent of review that would be appropriate for each rule, and the criteria against which each rule should be evaluated.

3. Developing a streamlined process for repealing rules.

The APA makes no provision for repealing rules, except through the normal rule adoption and amendment process. This process necessitates a notice of intent to adopt or repeal a rule, a notice of proposed rule-making, and an opportunity for public comment. As a result, some agencies leave outdated rules on the books, even though the rules are no longer authorized or enforced. Continuance of such rules contributes to a climate of inconsistency and uncertainty in the arena of enforcement, and adversely affects the credibility of government.

B. Objectives of the rules review subcommittee

To address these three issues, the Rules Review Subcommittee established three objectives:

1. **Develop a Prioritized List of Rules for Review.** It is critical that the regulatory reform effort address problems with existing rules. Requiring agencies to perform a wholesale

review of all of their rules would not be a cost-effective use of agency resources. Agency resources could be used to support regulatory reform more effectively if agencies had a list of the rules which the public had identified as most in need of review. Determining the format for soliciting public input, and compiling the results was our first task.

2. **Develop a mechanism for reviewing rules.** Developing a prioritized list of rules to be reviewed, and forwarding such a list to the responsible agencies, would support the reform effort by identifying the most problematic rules. However, without a standard mechanism for reviewing rules, the reform effort will not be truly effective. The mechanism must be institutionalized to provide an ongoing review process.
3. **Develop a simplified process for repealing rules which are clearly outdated .** A simplified process must be provided for the repeal of rules which are outdated, clearly ineffective or no longer necessary.

1. OBJECTIVE I: DEVELOP A PRIORITIZED LIST OF RULES FOR REVIEW

The subcommittee solicited public input regarding the rules most in need of review through a written questionnaire and a series of four public hearings. The hearings were held in Vancouver, Silverdale, Yakima and Seattle. Where people preferred to provide more detail than solicited in the questionnaire, we encouraged letters.

Questionnaire results

The subcommittee and resource team developed a questionnaire to solicit suggested rules for review. The subcommittee distributed approximately 8000 questionnaires to associations, local and state government entities, as well as individuals. Many business associations made additional copies and distributed them to their members. Distribution began in early May, with a due date of July 31. To date, we have received 151 responses.

The questionnaire was divided into two parts. Part I was designed to develop a prioritized list of rules which agencies may be asked to review because of the concerns raised by respondents. Part I requested the following information:

1. The respondent's name and the name of their organization.
2. The kind of business, the size of the company, and the respondent's position in the organization.
3. The general area in which the respondent spends the most time responding to rules, and the cost of compliance.
4. The five rules which, in the respondent's opinion, were most in need of review/revision. Because respondents may not always know whether their difficulty stemmed from a statute or a rule, and because they may not be able to give the exact citation or title of a rule, we permitted respondents to identify problem areas by topic, e.g. "The rule which regulates the hours that teens can work."

The second part of the questionnaire was designed to assist the subcommittee in understanding more clearly what it was about a rule that caused difficulty to the industry or individual respondent. Respondents selected the rule (from the list they had provided in part I) which was the most problematic, and provided:

1. The name of the agency enforcing the rule.
2. The organization's annual cost of compliance with the specific rule.
3. The degree to which the rule caused specific problems. The questionnaire provided a list of 12 frequently identified problems with rules, such as "the rule is difficult to read or understand," "the rule requires a technology or process which is outdated, ineffective or not cost-effective," or "the rule is not enforced consistently." Respondents were asked to indicate the degree to which they agreed with the statement, in order to distinguish between concerns about the policy behind a rule, and concerns related to the way the policies were being implemented through the rule.
4. Whether the respondent felt the rule should be repealed or changed, and the suggestions about how the rule should be changed, to help identify possible alternatives to the rules which may be more cost-effective, or more likely to achieve the intended effect.
5. Suggestions of ways that compliance could be made easier.

The following report summarizes the information provided in part I, to provide an profile of the respondents.

<i>Business Type</i>	<i>Number</i>
Accounting	3
Alternative Dispute Resolution	1
Bank, Financial Services, Insurance	5
Cattle Ranch	6
Clinical/Laboratory Organization	1
College	1
Collision Repair	1
Consulting	5
Contractor	9
Dairy or Dairy Equipment	10
Developer	5
Dry Cleaner	1
Farm	9
Feed manufacture	1
Food processing	2
Government, city, state, county, federal	13
Hazardous waste services	2
Home day care	1
Health care facility, hospital	4
Indian tribe	1
Manufacturing	4
Marina	1
Mining	1
Municipal Corporation, port district, school district	4
Non-Ferrous metal cutting	2
Non-profit or service organization	4
None specified	6

<i>Business Type</i>	<i>Number</i>
Noxious Weed Control	1
Nursery	1
Orchard	14
Painting	1
Petroleum products	1
Printing	2
Professional Employee Organization	1
Asphalt Mix	2
Sales	17
Trade Association	10
Transportation or trucking	2

From Part II, the following 10 areas of interest were selected most frequently when respondents were asked to indicate the most problematic rule:

Ten Most Frequently Cited Problem Areas

- | | |
|---|--|
| 1. Minor Work Rules | 6. Air Emissions and Burn Bans |
| 2. Pesticide Handling, Storage and Inventory | 7. Milk Inspection |
| 3. Business and Occupation Tax | 8. Dangerous/Hazardous Waste Regulations |
| 4. State Environmental Policy Act (SEPA) and/or Growth Management Act (GMA) | 9. Septic Tank Rules |
| 5. Removal of Agriculture's Exemption from Safety Regulations | 10. Industrial Insurance Tax |

The low response rate prohibits us from drawing objective conclusions about the nature and the extent of problems with specific rules. However, there were a few overriding themes which did come through clearly. Concerns about the extent of documentation and reporting were prevalent. Many respondents commented that it was difficult to identify any one rule as a problem; their difficulties resulted from trying to comply with so many different rules, when new rules were continuously being issued, and old rules seemed to change frequently.

Public hearing results

At the four public hearings, the most frequently cited problem areas were:

1. SEPA/GMA and other land-use issues
2. Minor work rules
3. Over-regulation in general
4. Septic tank and septic system design regulations
5. UTC regulations
6. Pesticide regulations

Letters received

The subcommittee received over 30 letters related to the identification of problematic rules. The most frequently cited rules were Labor and Industry administered rules related to safety. Other major concerns included the dangerous/hazardous waste regulations, requirements to pay

prevailing wages, and the hydraulics code dealing with wetlands or shoreline management. Approximately 20 other rules were referred to by a single letter each. In addition, people who wrote letters often referred to the cumulative burden caused by the number of rules with which they were required to comply, inconsistencies in agency administration or interpretation, and the associated paperwork.

2. OBJECTIVE 2: DEVELOP A MECHANISM FOR REVIEWING RULES

Standards for an acceptable mechanism

An effective rules review mechanism must meet the following standards:

1. It must be accessible to the public and to agency staff.
2. It must provide clear guidance to the petitioner for submitting concerns, and clear direction to the agency reviewing those concerns.
3. It must be feasible for agencies to carry out with existing resources.
4. It must include a clear timeline for agencies to follow.
5. It must be consistent across agencies.
6. It must be user friendly, and not unduly burdensome to the petitioner. This means that any member of the public must be able to initiate a petition without a detailed understanding of legislative process or the law.
7. It must provide an appeal process to an independent third person outside of the agency. An elected official, directly accountable to the public at large, serving as the independent third party, will significantly strengthen the process.
8. It must be ongoing. It should not be a "one-time-shot" such as that provided in the Regulatory Fairness Act.

The subcommittee's proposal is attached in Appendix G in the form of an amendment to the Administrative Procedures Act. An outline of our proposal follows.

Initiation of a petition

Anyone would be allowed to submit a petition to an agency, requesting the amendment or repeal of a rule for which the agency is responsible. The petitioner must understand that agencies have a responsibility to use public resources effectively and not waste review efforts on frivolous petitions. It will not present an undue burden on the petitioner to provide specific information about the petitioner's problems with a rule. The list which follows is presented as a guide for petitioners to use in defining their specific concerns:

1. **The rule is not authorized.** This could include one of two situations. It is possible that the rule had been authorized on adoption, but the authorizing statute has been repealed or revised, or other statutes have been enacted which changed the original authorization, and the rule has not been amended to reflect the resulting change. The second scenario would include rules which were never authorized by statute.

2. **The rule is not needed.** Since the rule was originally adopted, circumstances (social, economic, environmental, technological) have changed to the extent that the rule is no longer necessary.
3. **The rule conflicts with or duplicates other federal, state or local laws.** There are other state, federal, or local rules with which the rule in question is in conflict or duplication. The petitioner would be asked identify the conflicting or duplicative rule and the circumstances under which the conflict or duplication was evident.
4. **Alternatives to the rule exist which will serve the same purpose at lower cost.** The rule requires a method that is not cost-effective; for instance, new technologies have been developed since the rule was adopted which can achieve equivalent or better results at the same or lower costs.
5. **The rule is applied differently to private and government entities.** The rule is inequitably applied to public and private entities without appropriate justification.
6. **The rule does not serve the purpose for which it was originally adopted.** While the policy objective addressed in a statute or a rule may still be valid, the methodology prescribed by the rule may not have been as effective as anticipated. Or other factors, such as changing economic or social conditions, may have affected the ability of the rule to achieve the intended objective. In such cases, the petitioner could suggest different avenues to obtain the intended result.
7. **The costs imposed by the rule are unreasonable.** It is possible that when the rule was adopted, the financial impacts were not fully known or anticipated, and the resulting economic impact of the cost of compliance was much higher than anticipated.
8. **The rule is not clearly or simply stated: the rule is not understandable.**

We would note, however, that this list is not exhaustive. A petitioner can request a review on the basis of other concerns which, in the opinion of the petitioner, indicate that the rules should be reviewed. In providing this list, it is not the intent of the subcommittee to limit the grounds for rule review, but to ensure that a review is requested and conducted for substantive reasons.

The petition could be in the form of a letter or the petitioner could complete a standardized petition form. By using a standard form, the petitioner would be prompted to identify the reasons for requesting review, and the specific ways that a rule warranted agency attention.

The Office of Financial Management would develop and adopt by rule a standardized format for a petition to be used by all agencies. Using the rule-making process will permit public input into the design and content of the standardized petition. The subcommittee felt strongly that the petition must be user-friendly and not present an undue hurdle to members of the public with legitimate concerns about a rule. The format must be standardized so that the public will not have to become familiar with many different procedures and requirements across agencies.

If the petitioner chooses to submit concerns in a letter, the letter should include the same information as that which would be solicited in the petition format. The subcommittee specifically intended that petitioners who submit letters containing substantive reasons for a review should NOT receive a letter back from an agency requiring them to first fill out a form.

Petitions would be available as a convenience or as an outline. A sample format is included in Appendix H.

Agency response

Within 60 days of receipt of the petition, the agency would be required to respond. During those 60 days, agency staff would take a look at the rule and the petition and determine if the rule should be repealed or amended. The agency's response would take one of three forms:

1. The agency may deny the petition, indicating the basis for the denial in the response to the petitioner. The subcommittee felt that the agency should specifically respond to the concerns raised by the petitioner. However, it was not the committee's intent to allow the responses to form the basis for judicial appeal of an agency decision denying the petition.
2. The agency may determine that the rule should be amended. The agency would identify any other rules and agencies which should be involved in the review process, and would initiate rule-making procedures. The amendment of the rule would be subject to any new rule-making procedures. The agency would notify the petitioner of its intent and explain how the petitioner could have input into that process.
3. The agency may determine that the rule ought to be repealed, would initiate the repeal process, and would notify the petitioner of that decision.

Appeal to the governor

On receipt of the agency's response, the petitioner could accept the response or could, within 30 days, submit a letter of appeal to the governor. Within 45 days after receiving the appeal, the governor would respond to the petitioner in one of the following three ways:

1. The governor may deny the petition, addressing the petitioner's concerns in explaining the reasons for the denial.
2. The governor may deny the petition, and explain to the petitioner alternative means by which the governor's office intends to address the petitioner's concerns.
3. The governor may agree with the petitioner that a review is warranted. If the agency is under direct control of the governor (agencies included in RCW 43.17.010,) the governor would direct the agency to initiate a rule-making proceeding in accordance with the APA. For independent agencies, boards and commissions, the governor would recommend that the independent agency initiate rule-making proceedings.

The appeal, as well as the governor's response, would be published in the state register in order to provide notice of the concern and the governor's position on it. Copies would also be submitted to the chief clerk of the House of Representatives and the secretary of the Senate.

Anticipated outcomes

As outlined above and in the attached proposed mechanism for rule review, this proposal meets all of the standards which we developed during our early discussions. It would be an accessible, user-friendly process, with clear guidelines and timelines, as well as an opportunity for independent review. It would be standardized across all agencies. As an amendment to the APA, it would be codified, assuring continuity of the process, and its continued availability.

The proposed amendment further charges the business assistance center with publishing the mechanism and educating the business community about its availability.

3. OBJECTIVE 3: DEVELOP A HOUSECLEANING MEASURE

A housekeeping measure should make it easy for agencies to repeal rules which were clearly outdated or are no longer authorized. To be effective, such a measure must meet the following standards:

1. It must be simpler for agencies to use than the regular rule amendment and repeal procedure.
2. It must not eliminate the opportunity for public notice and comment on the proposed repeal.
3. It must include a clear timeline for all agencies to use.

The subcommittee's proposal is attached in Appendix G as an amendment to the Administrative Procedures Act. An outline of the proposal follows.

Agency sends list of rules to code reviser

To initiate the expedited repeal, an agency submits a list of rules to be repealed to the code reviser's office no later than June 30 of each year. A rule could be submitted only if it met one or more of the following criteria:

- The statute authorizing the rules had been repealed and had not been replaced;
- The statute authorizing the rules had been declared unconstitutional, and had not been replaced;
- The rule was no longer necessary because of changing conditions;
- The rule was redundant.

No later than July 31, the code reviser would publish all rules that are proposed for expedited repeal. This could be done either in a separate section of a regular edition of the Washington state register or in a special edition of the register.

Opportunity for public notice and comment

The agency would also file a copy of the pre-proposal notice of intent, identifying the rules proposed for expedited repeal, and would send a copy of the pre-proposal notice to any person who had requested notification of agency rule-making or repeal proposals.

Any person could write to the agency rules coordinator and file a written objection to the expedited repeal. No reason for the objection need be stated.

Completing the repeal

If an objection to a proposal for an expedited repeal was filed within 30 days of the publication of the pre-proposal notice of intent, the agency would not be able to proceed with the repeal except according to the normal rule-amendment procedures outlined in the Administrative Procedures Act. The pre-proposal notice of the expedited repeal would serve as the pre-proposal notice for the rules amendment process.

Otherwise, if no objection was filed, the agency could enter an order repealing the rules with no further notice. The order would be published in the same way as any other rule-adoption or amendment order.

C. Rule Adoption Factors and Simplification of Procedures

Rule Development Factors

Background

The issue of criteria or factors for agencies to follow when developing rules was one of the most difficult of any that the Task Force addressed. The Task Force's Interim Report did recommend that agencies "consider certain factors ... during the rule-making process," but did not translate the recommendations into bill language. In the subsequent legislative session there was disagreement over just exactly what the Task Force had intended. The Legislature approved a list of criteria, but that section was vetoed by the governor who then included several rule development criteria in his Executive Order on Regulatory Reform, EO 94-7.

In September 1994, several Task Force members insisted that the issue be put back on the table. The Chairwoman appointed an ad hoc subcommittee on rule development factors which met frequently right up to the weekend before the release of this report. The result of their efforts is proposed bill language that reflects a significant coming together of views. Participants gave up considerable ground to arrive at what they consider to be a fair and balanced solution. Balance is essential in the resolution of this issue, for as many participants noted during the discussions, this negotiation was one that cut both ways: the rule development process is the same for writing new regulations as for amending or repealing old ones; absent clear statutory authority, and given the political nature of the regulatory process, getting rid of old rules can be as difficult as issuing new ones.

Discussion of Recommendation

The overall approach that the Task Force is recommending is to establish a more rigorous rule development process for rules that people care about and to simplify the process for rules that are not contentious. (The statutory language is included in Appendix G.) Agencies adopting significant legislative rules would be required to apply a list of factors. The wording of each was carefully crafted to fit within the whole. The courts could then review agency compliance according to the rational decision-maker standard in the Administrative Procedures Act (RCW 34.05.570(2)(c)).

Some rules would by definition be required to go through a process of "heightened scrutiny," as negotiators called it. These rules are defined as "significant legislative rules," which are distinguished from "procedural rules" and "interpretive rules." In addition, there would be a nominating process: If an agency thought a proposed rule was not significant, but a member of the public did, that person could petition the Joint Administrative Rules Review Committee and JARRC could, by majority vote, designate any legislative rule as significant.

The rule-making factors will apply to significant legislative rules of the Dept. of Labor & Industries, Dept. of Ecology, Dept. of Revenue, Dept. of Employment Security, and Washington

State Dept. of Fish and Wildlife.) The nomination process will apply to legislative rules of any agency. There was some concern expressed that the list of agencies should be broadened, but the Task Force did not have time to evaluate whether they should be included. However, the nomination process which applies to all agencies is designed to deal with that concern.

There was also some concern regarding the applicability of these factors to some non-legislative rules. While section 1 (4)(e) partially addresses this concern, it does not provide any automatic process to subject non-legislative rules, which include substantive policy issues, to the factor requirements unless an agency voluntarily decides to do so. There may be instances where interpretive rules which include substantive policy issues should be subjected to heightened scrutiny, but the Task Force was not able to address this during its term. It therefore requests all interested parties to continue to work together to develop additional procedures for specific agencies to address this concern.

The recommendations also address the question of what statutory authority an agency may use when adopting a rule. Task Force members agree that new rules implementing statutes passed after the effective date of this amendment should be based on specific provisions of statutory authority, as opposed to relying solely on the statute's statement of intent or purpose, or on the enabling provisions of the statute establishing the agency. Task Force members did not agree on whether these provisions should also apply to future rule-making to implement existing statutes. With regard to the application of this statute to new or amended rules implementing existing statutes, there are essentially two points of view.

One view is that meaningful regulatory reform cannot be achieved without ending the current practice of using rule-making authority contained in agency enabling statutes, combined with a substantive law's statement of intent or purpose, to form the basis of authority to adopt rules. In addition, there is concern that an agency could violate the spirit of this agreement by drawing upon existing broad grants of rule-making authority, i.e. statements of intent or purpose, to regulate in areas that the Legislature did not specifically authorize when passing a new law.

The other view is that it is practically impossible to understand the unintended consequences of extending this requirement to new or amended rules implementing existing statutes and would therefore be unwise to do so. It was impossible to assess which programs in the hundreds of state agencies, boards and commissions would be impacted. This could also result in "freezing" rules in place since authority to amend them would be absent. Furthermore, the Legislature, when passing the statutes upon which the rules are based, did not use this requirement.

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SEPA/GMA Final Report

(Legislation implementing these recommendations will be available in early January)

V. INTRODUCTION

The recommendations in this document represent the first step toward the ultimate integration of land use planning and environmental review. Over the past twenty years, most analysis of the environmental impacts of land use decisions has occurred under the State Environmental Policy Act. The Growth Management Act, enacted in 1990 and 1991, increased the prospect of better integrating land use planning and environmental review. At the same time, however, the GMA has proved more difficult to implement than its proponents anticipated. Local governments have expended considerable effort drafting comprehensive plans and development regulations.

Improvements to the land use planning system will take time to implement. The recommendations in this report offer an important first step toward an integrated land use planning system -- one that includes environmental review as a fundamental part of the planning process. To that end, a number of creative ideas were presented to the Task Force. Some are worthy of additional review and may lead to further recommendations in the coming years.

The following summary includes the major elements of this report's recommendations.

- **Integrated Land Use Planning and Environmental Review.** Local governments planning under the GMA should make environmental review a key component of the land use planning process. (Recommendation VI. A.)
- **Legislative Policies and Goals for Development Regulations Protecting Critical Areas.** The GMA requires all cities and counties to designate and protect critical areas, including wetlands, aquifer recharge areas, frequently flooded areas, steep slopes, and fish and wildlife habitat. Because of the state's interest in protecting these critical areas, the Task Force believes the GMA should provide more specific policy direction to local governments and to the Growth Management Hearings Boards. (Recommendation VI. B.)
- **Development Regulations and Environmental Review.** Many local governments have adopted development regulations that provide for environmental review and mitigation. An applicant for a project that complies with these development regulations should not be required to duplicate environmental review or to provide additional mitigation under SEPA if these same environmental impacts are adequately addressed by the development regulations or by the applicable comprehensive plan policies. (Recommendation VI. B.)
- **Funding for Integrated GMA Planning and Environmental Review.** Project applicants currently pay for most of the environmental review costs connected with development activity. However, a more integrated land use planning and environmental review process will require local governments to pay for environmental review costs even before projects have been identified. Local governments will need a source of funds to pay these expenses and a means of being reimbursed for money already spent. A state revolving loan fund should be set up to provide a reliable funding source. Local governments should be given authority to assess a fee on each project applicant to recover the costs of a review that benefits the applicant. (Recommendation VI. C.)
- **Enhanced Public Participation.** Local governments should encourage public participation in the planning and decision-making process through a variety of innovative techniques. (Recommendation VI. D.)

- **Integration of the SMA and the GMA.** The Shoreline Management Act (SMA) is a specialized land use planning statute that is not referenced in the GMA. To better integrate these two policies, the planning portions of local government shoreline master programs should be brought into the comprehensive plans adopted under GMA. The shoreline program would be a separate element of the plan. Development regulations adopted under the SMA also would be incorporated into and made consistent with the development regulations adopted under GMA. Because of the state's interest in shorelines, the state Department of Ecology would continue to review and approve the shoreline programs. The permitting process for substantial development permits covered by the SMA also would be modified to coordinate with the consolidated local government permit process. (Recommendation VI. E.)
- **Consolidated Local Permit Process.** Local governments planning under the GMA should have a consolidated permit procedure and environmental review should be integrated with project review. Currently, different types of local government permits require different procedures, each with its own timelines and hearing and notice rules. In addition, numerous opportunities exist for appeal of local government permit decisions. All reviews, hearings, and decisions on a permit application should be consolidated into a single process. At the option of a local government, hearing examiner decisions should be appealable directly to court. (Recommendation VII. A.)
- **Coordinated State Permit Procedure.** A state permit coordination process should be established to replace the existing statute. Under this procedure, an applicant for state permits would apply to the Department of Ecology for permit coordination. Ecology, or another more appropriate lead agency, would actively manage state permit responsibilities, but would not have the authority to make decisions for other state agencies. The lead agency would convene a meeting between the applicant and the agencies with permit responsibilities and establish a workplan. A state agency that fails to meet the agreed-upon deadlines would have to reimburse any fees paid by the applicant to that agency. If local government permits are involved and the applicant asks the local government to join the process, the state agencies will be required to coordinate their process with the local government process. The applicant will be required to pay the lead agency's costs in coordinating the permit process. (Recommendation VII. B.)
- **Judicial Review Reform.** The statutes governing the appeal of local government land use decisions must be clarified. Currently, much confusion and uncertainty surround the appeals process, with many opportunities for mistakes. All appeals of the local government decision should be consolidated into a single appeal proceeding of the local government decision. Reasonable attorney's fees should be awarded to the prevailing party at the Court of Appeals or Supreme Court if the party also was the prevailing party at the local government level and on superior court review. (Recommendation VIII. A.)
- **Shorelines Hearings Board Reform.** The Shorelines Hearings Board should issue its decisions within 180 days. (Recommendation VIII. B.)
- **Study.** To continue the momentum which has developed for reforming and improving the state's environmental and land use statutes, the 1995 Legislature should establish a task force to focus on these issues. The task force also should evaluate the implementation of the GMA and the effectiveness of the Regulatory Reform Task Force's reforms, and explore the need for a state land use code. (Recommendation IX. A.)

VI. INTEGRATION OF PLANNING AND ENVIRONMENTAL REVIEW

A. *Environmental Review of Comprehensive Plans, Subarea Plans, Neighborhood Plans, and Development Regulations*

- **Environmental review of comprehensive plans, subarea plans, neighborhood plans, and development regulations should be as comprehensive and detailed as is practicable.**

In jurisdictions planning under the GMA, all citizens and governmental entities should:

- Conduct comprehensive land use planning through the GMA process (including plan-level environmental analysis) rather than through SEPA review of proposed projects;
- Think about environmental quality as each community charts its future, by involving diverse sectors of the public and by incorporating early and informal environmental analysis into GMA planning and decision making;
- Recognize that different questions will need to be answered and different levels of detail will apply for every GMA action and at each phase of GMA planning, from the initial development of plan concepts or plan elements to implementation programs;
- Use SEPA review together with other analyses and public involvement to produce better plan decisions;
- Combine (to the fullest extent possible) the processes, analysis and documents required under the GMA and SEPA, so that GMA plan decisions and subsequent implementation will best promote the environmental, economic, and other goals of the GMA and SEPA. This process also will lessen any undesirable or unintended effects on a community's quality of life;
- Focus environmental review and the level of detail needed for different stages of plan and project decisions on the environmental choices most relevant to that stage of the process;
- Not duplicate the review that has occurred for plan decisions when specific projects are proposed;
- Use environmental review on projects to help: (i) Review and document consistency with GMA plans and regulations; (ii) provide prompt and coordinated review by agencies, tribes and the public on compliance with applicable environmental laws and plans, including mitigation for site-specific project effects that have not been considered and addressed at the plan or development regulation level; and (iii) ensure accountability by local governments to applicants and to the public for mitigation measures; and
- Maintain or improve the quality of environmental analysis, both for plan and for project decisions, while integrating these analyses with improved state and local planning and permitting processes.

[Discussion: Both the GMA and SEPA seek healthy, sustainable communities and productive harmony between people and nature. GMA governs policy choices related to managing growth through local comprehensive plans and development regulation. SEPA requires that a decision

on these GMA actions, as well as subsequent decisions on specific projects, consider the effects on the natural and built environments. By providing plans and development regulations that are both more specific and more comprehensive than in the past, GMA will produce policies for land use and resource management that have sometimes been the result of project level review under SEPA. As GMA is implemented, comprehensive plans and development regulations should result in faster and more focused site specific environmental review. One of the promises of the GMA is to improve the planning process by allowing the cumulative impacts of development to be considered earlier in the process. In order for this promise to be met, local governments must conduct appropriate environmental review at the planning stage.

Over the past 20 years, many people have focused on the SEPA process in terms of whether or not an environmental impact statement is required (a SEPA threshold determination), rather than on how to provide useful environmental analysis to make decisions. This problem has been compounded by a general unwillingness to depart from a typical environmental checklist or EIS format and to combine other planning and SEPA documents, even though these rules mandate and encourage people to do so. GMA and SEPA will be integrated only if:

- (a) Quality environmental analysis is performed along with other planning analyses, often well in advance of formal SEPA determinations and proposed GMA plan documents;*
- (b) An ongoing informal effort is made to define the scope of the options and their environmental consequences throughout the planning process leading up to plan decisions; and*
- (c) GMA and SEPA documents are one and the same wherever possible, rather than separately prepared planning and environmental documents.]*

B. Implementing Integrated Planning and Environmental Review with Permitting.

This recommendation has two parts: (1) In designating and protecting critical areas under the GMA, local governments should use the best available science to guide them in making their policy decisions. The Growth Management Hearings Boards should also be able to rely on scientific expertise in evaluating development regulations designed to protect critical areas; and (2) Local governments should use adopted development regulations to provide environmental analysis for and mitigation of significant adverse environmental impacts.

1. GMA Critical Areas. The GMA requires all local governments to provide for the protection of certain critical areas. Because of the state's interest in these areas, the Legislature must establish clear direction on the state's goals and policies for the protection of these areas. This direction should be given by requiring local governments to use the best available science when designating and protecting critical areas. Special consideration should be given to efforts to protect anadromous fish resources. The Growth Management Hearings Boards (GMHBs) should be allowed to retain scientific expertise when necessary to evaluate critical areas development regulations.

2. Using development regulations. As described in VI. A., environmental analysis and mitigation should be integrated into each step of the planning and development process. When comprehensive plans and development regulations have been subject to environmental review

and incorporate appropriate mitigation provisions, mitigation for project-specific impacts should be limited to issues not previously analyzed or which have not be adequately addressed by the development regulations. Development regulations should also recognize and take into account regional, state, tribal, and federal development regulations.

State agency rules which are intended to mitigate project impacts should also provide the environmental analysis and mitigation that would otherwise be required under SEPA.

Project-specific environmental review will still be necessary under this approach. Local governments will retain the discretion to impose site-specific mitigation if the site-specific adverse environmental impacts were not addressed by the development regulations.

Environmental review and mitigation of unanticipated circumstances, and environmental review and analysis would be conducted as part of the integrated project review under VII. A.

A revised project application checklist which identifies a project's impacts should be developed.

[Discussion:

1. GMA Goals and Policies. A major premise of the second part of this recommendation is that environmental analysis and mitigation of specific projects should not duplicate the environmental review and mitigation provided for in development regulations. The GMA gives cities and counties considerable authority to adopt comprehensive plans and development regulations. However, the Legislature declared certain areas to be of statewide interest. All cities and counties are required to adopt development regulations to protect these critical areas. A challenge to a development regulation is handled through an appeal filed with a Growth Management Hearings Board. The Boards have the authority to determine whether development regulations comply with the GMA.

In order to assure that local government development regulations protecting critical areas meet the state's interest in protecting these areas, the Task Force considered several options for insuring that critical area development regulations meet a minimum level of adequacy. The Task Force believes the Legislature must address this issue by setting clearer direction as to the state interest to be protected. The GMA currently contains only general statements of the goals and policies which are to be considered by local governments (in adopting) and the boards (in reviewing) development regulations. The GMA should be amended to give more guidance to local governments and the Boards in interpreting the GMA. This would provide more direction to local governments and more guidance to the GMHBs if there is an appeal of a critical area development regulation.

A second option which has received considerable discussion, but which is not being recommended at this time, would provide for establishing state or regional standards for critical areas. These standards could be developed through a number of different mechanisms. They could be developed through a negotiation process involving those with an interest in a particular critical area. Another mechanism proposed to the Task Force would be to establish a panel of scientific and policy experts to develop standards based on scientific information. The standards would be subject to peer review and then legislative review. One difficulty with these proposals is that they would result in significant delay while the standards are developed and local governments bring their development regulations into compliance.

One additional option which could be considered would be to establish a two-step process. The first step would be the development of legislative goals and policies as recommended. The second step would be the development of more detailed standards through a negotiation or other process that allows all interested parties to participate in the development of the standards.

An alternative to including more specific legislative goals and policies in the GMA would be to direct state agencies to establish more detailed minimum standards for critical areas. The standards could be developed through a negotiated rule-making process or some other means which would involve all the parties who have an interest in the issue.

Finally, whatever means is used to assure the adequacy of critical area development regulations, recognition must be given for the differences between different areas of the state.

2. Using Development Regulations. Many local governments have adopted substantial environmental mitigation regulations in the form of development regulations, both under GMA and under other statutes. These include sensitive area ordinances, surface water runoff and drainage, school adequacy, transportation concurrency and level of service standards, park and recreation standards, impact fees and so on. These development regulations address many elements of the natural and built environment and may include environmental analysis and mitigation for project impacts which are also analyzed under SEPA. Some jurisdictions have adopted SEPA policies acknowledging that certain specifically designed development regulations provide environmental analysis and mitigation and that no additional mitigation will be required under SEPA. The Task Force believes this is one of the best methods for integrating planning and environmental review.

To the extent these regulations provide for environmental analysis and substantive environmental protection, additional environmental review and mitigation should not normally be required under SEPA. SEPA will continue to provide a safety net for special circumstances. Development regulations should provide for special studies or the exercise of discretion in special circumstances.

Over time, local governments should strive to adopt development regulations addressing all elements of the environment and incorporating environmental review and mitigation.

A number of state and regional regulations also address environmental concerns, e.g., Air Pollution Control Agencies rules for air quality, NPDES rules for surface water drainage and water quality, and numerous state and federal regulations for toxic and hazardous substances. These development regulations should be accepted by local governments.]

C. Assure that local governments have funding to pay for integrated planning and environmental review.

Local governments must have a reliable source of funding to pay for the costs of integrated planning and environmental review. In addition, local governments should have a variety of funding mechanisms available to pay for and recover the costs of financing the preparation of comprehensive plans and development regulations and to conduct environmental review of those plans and development regulations. There are two elements to a funding package for the development of local government comprehensive plans and development regulations that have an appropriate level of environmental review. First, local governments need a source of funds at the

beginning of the planning process to fund planning and accompanying environmental review. The Legislature should establish a state revolving loan fund from which local governments could borrow the funds necessary to prepare comprehensive plans and development regulations and integrated environmental review. Other mechanisms which should be made available to local governments include: revenue bonds; a public development authority or urban renewal agency; and the authority to capitalize planning costs into capital costs.

Second, local governments must be able to recover the costs of conducting the environmental review of comprehensive plans and development regulations. There are a number of different tools which could be made available to local governments to recover these costs. The option with the greatest potential is an administrative fee imposed on those who apply for building permits in the area covered by the comprehensive plan. The fee would be proportional to the size of the development in relation to the existing and proposed development in the area covered by the comprehensive plan. Other options which should also be made available to local governments, but which may have limited utility, include: formation of a local improvement district, tax increment financing, general fund sources, and the real estate excise tax.

[Discussion: The key to an integrated planning and environmental review process is the need for an adequate level of environmental review of comprehensive, subarea, and neighborhood plans, and development regulations. If environmental concerns are not adequately addressed at these levels, they will need to be addressed on individual development permit applications.]

In the initial round of planning under the GMA, local governments have been only moderately successful at incorporating environmental review into the planning process. As local governments move from plans covering the entire jurisdiction to subarea and neighborhood plans, the potential for incorporating more detailed environmental review is significantly increased.

Local governments must have at least one reliable source of funds for this integrated planning and environmental review process. The Task Force believes a state revolving loan fund is the best mechanism to meet this objective. In addition to one reliable source of funds, the Task Force believes that a variety of other funding and reimbursement options should be made available to local governments. There are some options that are likely to be more useful for the majority of jurisdictions. In making its recommendation the Task Force considered the following factors: legal obstacles, reliability, equity, accountability, and political feasibility. As funding proposals are developed and implemented, the differing circumstances of urban and rural jurisdictions may require different approaches.

Initial Funding. *One of the impediments to incorporating detailed environmental review into the planning process is the lack of financial resources available for this activity. The local government's environmental review costs occur at one time at the beginning the process. It therefore needs an infusion of capital at that time. Traditional sources of funding, such as user fees and taxes, may not provide sufficient funds when needed. The local government needs some additional means to obtain these funds when they are needed.*

A state revolving loan fund is the most reliable method of providing the initial funding for comprehensive plans and development regulations. Through the loan approval process,

assurances can be provided that a local government's comprehensive plan and development regulations are carefully integrated with environmental review.

Other sources for initial funding should also be authorized. However, it must be recognized that most of these options may be applicable only in limited circumstances. One tool frequently used to fund some types of activities is the sale of revenue bonds. The stream of revenue to repay bonds sold to finance plans may not be secure enough to generate sufficient market interest. Bonding also carries significant transaction costs which may make bonds less attractive.

Another alternative is the creation of a public development authority for a particular area within a local government's jurisdiction.

One final option for initial funding is to allow planning costs related to capital expenditures to be considered a capital expenditure and paid for out of bonds issued for capital projects. State law currently requires that bonds issued for capital purposes are used solely for specific projects. Planning costs cannot be included in these capital expenditures.

Reimbursement Options. *There is general agreement that the cost of conducting an environmental review of a comprehensive plan should be borne in part by the developer who benefits from that review. Some of the expense that local governments incur is currently borne by the developer as part of project development. Under current practice, the applicant pays for most, if not all, environment review costs required for a project. Under the Task Force's recommendation, the project applicant will generally not be required to conduct environmental review for those elements of the environment that have been addressed by development regulations. This will mean less cost for the developer. It is appropriate that a project which benefits from the work of the local government in conducting environmental review reimburse the local government for the benefit the project applicant receives.*

An equitable solution is to require a project applicant to pay the proportionate share of the local government's environmental review costs for the area covered by the plan.

There are other reimbursement mechanisms that local governments could use, but these are useful in limited cases. In some locations, the creation of a local improvement district may be appropriate. Tax increment financing, if it meets constitutional tests, might also be appropriate for some types of planning areas. Reallocation of a portion of the real estate excise tax might also be considered.]

D. Improve Public Participation in the Development of Comprehensive Plans, Subarea Plans, and Neighborhood Plans

Local governments must use a variety of techniques to involve the public at all stages of the planning process. Integration of SEPA and GMA at the comprehensive plan level should reduce the need for extensive environmental analysis at the project level--policy decisions will be made through GMA plans rather than through the use of SEPA at the project level. Public participation requirements and practices must be re-thought in light of these changes. Enhanced opportunities for meaningful public participation at the plan level are essential prerequisites for streamlined processes at the project level. These recommendations are not intended to be

prescriptive, but rather to guide local governments in doing the best job possible. Flexibility should be allowed so that local governments can be creative and innovative in their methods.

Finally, the Task Force does not believe legislation is necessary to implement these recommendations. However, local governments may need technical assistance in order to implement many of these approaches. The Legislature should assure that sufficient resources are provided to local governments to enable them to meet the public participation requirements.

Comprehensive Plan Level:

- **Public Participation Program.** The jurisdiction should establish, publish and widely disseminate a public participation program which lays out the "procedures providing for early and continuous public participation" it intends to use during the comprehensive planning process. This program should describe which procedures will occur at the various stages of plan development, and place each proposed procedure at an approximate point on the timeline. The list of procedures in the GMA should serve as a blueprint for the public participation program. Jurisdictions should use a checklist showing how each component of the program would be implemented.
- **Visioning.** A visioning process is strongly recommended as an important early step providing citizens with the opportunity to identify important values and community characteristics which they wish to have addressed in the comprehensive plan, and to work together to create a vision for the long term future of their community. The results of the visioning process must be carried forward and used meaningfully in the subsequent planning of the jurisdiction.
- **Advisory Groups.** Citizens and stakeholder advisory groups are strongly recommended to work with planners and officials to develop the plan, based on GMA requirements and the visioning results. The groups should be balanced and should involve all key constituencies (including kids, senior citizens, various economic levels, agencies that have veto power over the plan, etc.). Their mission, scope and time frame must be clearly spelled out.
- **Workshops and Roundtable Discussions.** Workshops and roundtable discussions are important complements to the public hearing process. They help citizens and stakeholders to become better informed about planning issues and proposals, and create an opportunity for views and concerns to be exchanged in a forum that enhances mutual understanding and respect. They are best used at appropriate stages of planning such as: visioning, creation of alternatives, framing of issues, and developing mitigation. The workshops and roundtable discussions should rely on materials which clearly frame the issues using language and graphics easily understandable to the participants.
- **Public Hearings.** Public hearings alone are not effective as public participation tools, but in conjunction with a number of other processes may be helpful. They do give citizens a feeling of being heard by their government but do not usually elicit the type of thoughtful participation more likely to occur in other settings. While workshops and roundtable formats work best at the stages mentioned above, public hearings are most appropriate immediately preceding plan adoption. Public hearings should be held in venues which are convenient and non-intimidating to citizens, such as public schools and community centers. Jurisdictions

should consider holding a series of public hearings in various parts of the jurisdiction rather than a single hearing in Council chambers.

- **Presenting Information and Inviting Participation.** Good graphic illustrations of the concepts and proposals under consideration are very important ingredients of effective public participation in planning. These can include isometric drawings, 3-D maps, slides and photographs of different zoning categories and densities, aerial photographs, small scale maps for citizens to mark up, and any other tools which allow citizens to visualize the plan in ways they can understand. Public participation mechanisms which are interactive are very successful at engaging the interest and involvement of citizens. These can involve television shows or videos followed by facilitated discussions and questionnaires, a visual preference survey tool, computerized response mechanisms linked to graphics illustrating options or alternative scenarios, and other similar tools. GMA Hotlines can be very useful, conveying to citizens through a recorded message when, where and on what topic the next scheduled meetings will occur, and providing a link to a responsible planning official.
- **Feedback.** Continual feedback is essential so that the public feels its participation was listened to and valued. This means responding in such a way that the variety of comments and suggestions is acknowledged, and the rationale for the decision is spelled out. An important feedback component should occur when the plan is adopted; this should include information on the next steps -- development regulations -- and how citizen comments were used to arrive at the plan decisions.
- **Public Involvement Record.** Creating a record of public involvement is important because, in our highly mobile society, people moving in and out of neighborhoods need to know and respect the prior involvement of their neighbors and how it influenced the decision making process. Officials should keep a record of who came to meetings, where they live, and what decisions were made. This record could appear as an appendix to the plan. It should be consulted as part of the plan amendment process as well.

Subarea and Neighborhood Plan Level:

All the tools suggested for the comprehensive plan would be appropriate for subarea and neighborhood planning. Because most comprehensive plans are complete or nearly complete by this time, focus on public involvement at the subarea plan level should receive particular attention now. Additional considerations:

- **Parameters.** The parameters for the subarea plan must be made clear from the outset. Citizens need to understand that the subarea plan must comply with GMA and be consistent with the comprehensive plan, or that if it results in proposed changes to the comprehensive plan these must be looked at in the context of the entire jurisdiction and balanced accordingly. Boundaries must be clearly established as well. The plan doesn't need to include all elements required in the comprehensive plan, but early negotiations between the subarea citizens and the jurisdiction should establish which elements are to be included. Planning resources, staffing, methods of achieving representation, timelines--all must be agreed to before the process gets underway.
- **Community Validation.** Before the completed plan goes on to the Planning Commission (where one exists), or to the Council for adoption, the subarea plan could be subject to an

accelerated validation process of some sort. This safeguard addresses the difficulty of ensuring that citizens working on the plan are fully representative of all interests in the community.

- **Integration with Comprehensive Plan.** The subarea plan must be carefully integrated into the comprehensive plan so that it remains consistent with the plan and GMA, and its impacts on other areas of the jurisdiction are considered and mitigated.
- **Partnership.** Care should be taken to develop a collaborative partnership between the subarea citizens and the jurisdiction, so that citizens feel ownership of their plan but understand the need for it to relate to the jurisdiction's needs as a whole. Ideally this is neither a top-down nor a bottom-up process, but should have elements of both approaches.

Plan Amendment Process:

Effective public participation in plan amendments provides an excellent opportunity to involve citizens in the comprehensive plan even after it has been adopted, and may even be an easier route to that goal because it is a more specific and understandable process.

- **Monitoring and Evaluation.** Involve citizens in establishing a process for monitoring and evaluation of the plan. This typically would be an indicators and benchmarking process, although the jurisdiction could create another method if it preferred.
- **Feedback from Project-Related Review.** Jurisdictions should establish a method for docketing public comment on projects which is plan- or policy-related, so that this input could be considered by decision makers at the time they are developing plan amendments. Consistently mentioned issues and concerns should be given particular attention.
- **Public Notice.** The amendment process should be widely advertised and broadly accessible for public input and comment. Input should be gathered, summarized, and converted to suggested amendments where appropriate.
- **Citizens Oversight Committee.** A Citizens Oversight Committee would be a good way to enhance public confidence in the amendment process. The committee could suggest methods and procedures for ensuring a successful amendment process, and then oversee the process as it moves from soliciting comment to decision making.

Permitting Process:

Public participation during the permitting process is covered elsewhere in the subcommittee's recommendations. The following recommendations would further improve public participation at the permitting stage:

- **Pre-Application Review.** Encourage pre-application design review meeting(s) between the community and the project proponent in order to discuss the project, communicate concerns and community design values, discuss mitigation measures, and generally improve the prospects of smooth sailing for the project later in the process.
- **Clear Purpose of Comment Periods.** Clear definitions of the purpose of public comment periods would greatly improve the chances for focused and pertinent input. Comments which

are "outside the box" -- plan related instead of pertinent to the project -- should be docketed for discussion during the plan amendment process (see above).

- **Effect of Major Changes to Project Proposal.** Should major changes in the project occur during the review process, citizens should be given another chance to comment on the project. The definition of "major" should be clearly understood up front and arrived at with public input.
- **Meaningful Participation.** Jurisdictions should provide meaningful opportunities for citizens to help devise appropriate mitigation for the proposed project.

E. Integrate the Growth Management Act and the Shoreline Management Act.

The Growth Management Act (GMA) and the Shoreline Management Act (SMA) should be integrated into a single planning process, retaining the shoreline program as a separate element of the comprehensive plan and as separate development regulations. The goals and policies of the SMA relating to shorelines of the state should be explicitly referenced in the GMA. The definitions in the GMA and SMA should be made as consistent as possible, without changing the coverage of the SMA. The GMA should be amended to add a requirement that the comprehensive plan include a shoreline element as a separately identifiable element of the comprehensive plan. The existing shoreline master program development regulations adopted to comply with the SMA should be included as a separate set of development regulations under the GMA. The substantial development permit should be integrated into the permit process established in the GMA development regulations.

The substantive requirements for adopting the shoreline master program and for issuing substantial development permits should be retained. The process should be clarified and simplified. Ecology will continue to review and approve shoreline master programs and amendments. It will also continue to have authority to appeal substantial development permits as provided in VIII. D. However, Ecology will no longer be required to adopt local government shoreline master programs by rule.

[Discussion: The GMA and SMA goals and policies require local governments to adopt plans and development regulations to implement those goals and policies. The goals and policies of the two statutes are similar. The plans and development regulations required by both statutes share many elements.

There are differences, though. Definitions are not entirely consistent between the two statutes. The SMA applies only to shorelines of the state. Under GMA, all cities and counties are required to adopt critical area ordinances, some of which are also covered by the SMA. The two statutes also have different definitions for wetlands.

A more significant difference relates to the procedural requirements of the two statutes. Each has its own procedure for adopting plans, standards for state review and oversight, and appeal process. These differences create confusion in the planning process. They also present problems when planning decisions are appealed, particularly because two different boards have authority to hear different aspects of the plans. The differences also create uncertainty about

whether the goals and policies of the SMA or the GMA, where they do differ, should take precedence in the shorelines.

Because the GMA and SMA have many elements in common, there are persuasive arguments for merging the two statutes into a single planning statute. However, the task force heard strong resistance to merging these into a single planning statute. Consequently, the task force's current recommendation is to maintain the SMA as a separate statute. This issue of ultimate integration should be revisited in the subsequent review recommended at the end of this report.

It is not the intent of this recommendation to expand the Department of Ecology's authority to review local government comprehensive plans or to give it approval authority over comprehensive plans other than for the shoreline element, which would be integrated into the plan under this recommendation.]

F. Clarify the definition of "Development Regulations" under the GMA to exclude quasi-judicial permits and approvals on specific projects.

The definition of development regulations under the GMA should be clarified to exclude quasi-judicial permits and approvals for specific projects. These permits and approvals include approvals for subdivisions, planned unit developments, and individual rezones.

[Discussion: The existing definition of a development regulation under the GMA covers "any controls placed on development or land use activities" by a local government. Although it was intended to cover the zoning, subdivision, planned unit development, and other local ordinances that are generally applicable to development in the jurisdiction, the use of the words "any controls," "zoning ordinances," "subdivision ordinances," and "planned unit development ordinances" could be interpreted to include quasi-judicial approvals of specific projects by a local government by ordinance. The GMA provides that the adoption and amendment of development regulations are appealable to the Growth Management Hearings Boards. Quasi-judicial actions were not intended to be subject to these procedures. Approvals by counties of new fully contained communities would continue to be defined as amendments to a county's comprehensive plan and development regulations because those approvals would require a revision to the county's urban growth area and adoption of new development regulations. Subsequent approvals of subdivisions, planned unit developments, and other similar approvals within the approved newly contained community would be considered quasi-judicial permits.]

VII. PERMITTING

A. Local Government Consolidated Development Permit Process.

Require local governments planning under the GMA to establish a consolidated development permit process which integrates land use decisions, project review, and environmental review, promotes informed public participation, eliminates redundancy, and minimizes unnecessary delay and expense in the development permit process. Substantial development permits under the SMA would also be included in the process. Some

elements of the consolidated permit process should be required for all local governments. These might include time periods for notice and comment and for appeal to court. Other elements should allow a local government considerable flexibility to choose the most appropriate methods for its community. These might include the type of notice or the decision-making body. Local governments not planning under the GMA should also be authorized to adopt the consolidated permit process.

Purpose	Establish standard procedures for land use decisions; promote informed public participation; eliminate redundancy in the application submittal process; provide for coordination with state permitting activities; and minimize delays and expense in appeals.
Applications	<p>Require local governments to consolidate the existing SEPA process with the land use permit review.</p> <p>Require local governments to include all land use permits necessary for the consolidated project review in a single application process. Projects which, by their nature, must be approved or developed in phases, may be approved in phases at the election of the applicant.</p> <p>Change the SEPA checklist to a compliance checklist, shifting the focus of the checklist to the disclosure of the project's impacts and its compliance with the comprehensive plan and the development regulations.</p>
Notice and Commenting	<p>Consolidate and standardize the public notice and comment period so that one notice period covers both environmental review and all land use permits included in the application.</p> <p>Require public notice and an opportunity for public and agency comments prior to project approval. The public and other agencies must be given sufficient time to review the application and provide comments.</p> <p>Provide flexibility for local governments to select the most appropriate types of notice for different permits in their communities.</p> <p>Allow local governments to use informal neighborhood meetings or design review in connection with certain types of permits or projects.</p> <p>Consider the lack of timely comments as the lack of objection to the project as proposed.</p>

Review Process Eliminate separate procedural and substantive environmental review and integrate environmental with project review.

Rely on the development regulations to impose most project conditions.

Development regulations may require environmental studies and specify mitigation in certain circumstances, e.g., steep slopes, liquefaction zones.

If one or more state land use permits are required for a project (see VII. B.), or if a project requires permits from more than one local government, allow the local government to act as the project manager to coordinate permit issuance by all local governments and state agencies.

Allow local governments to specify the decision maker (e.g. staff, hearing examiner, city or county council) for each type of land use permit and whether a public hearing is required before the decision can be made.

Issue one administrative report that consolidates all staff decisions and recommendations and includes any required or recommended environmental mitigation.

Consolidate any required public hearings into a single hearing.

Specify time periods for the completion of the review process, including the decision by the hearing officer or other decision-maker following a staff recommendation.

Administrative Appeals Provide for notice of the decision, a uniform appeal period, and a single consolidated appeal hearing for any appealable land use permit decisions.

If a public hearing is required before a land use permit decision can be made by the local government, allow only one consolidated administrative appeal hearing which shall be on the record.

Specify the time limit for completion of the local appeals process.

Specify a time period for the shoreline hearings board to decide appeals of shoreline permits and any related environmental mitigation.

[Discussion: Land development requires a myriad of approvals and permits from local governments. These can range from zoning changes to conditional uses or variances, grading permits, and subdivisions. Each approval or permit may have its own application form, hearing procedure, and timeline. A number of approvals or permits may also require SEPA review. Coordinating the approvals and permits can be a difficult and time-consuming process for the applicant, the public, and the local government, especially if different decision-makers are required for the different permits or approvals. In many jurisdictions, it can be particularly difficult for neighbors and others affected by a project to monitor and participate in public

hearings. This can lead to difficulties for both the applicant and local elected officials at the time a decision on a permit must be made.

Some local governments have adopted permit processes which allow a single application for a development permit to cover all of the permits which will be required for the proposal. The application covers land use decisions, such as variances and conditional uses, and land impacts, such as grading, stormwater, and transportation. Environmental review is incorporated into the permit process and a single public hearing addresses a multitude of issues. The local government is able to process the application in a manner which allows for public input and the appropriate sequencing of decisions.]

B. Coordinate State and Local Government Permitting Activities

Enact a State Permit Coordination Act which allows an applicant for state and local permits to have a state agency or local government act as an active manager of the permit application. The act would include the following features:

- The process may be used at the discretion of an applicant. The applicant may withdraw at any time and may request a particular agency to withdraw.
- The process shall include a specific list of state permits, including permits issued by the Departments of Ecology, Fish and Wildlife, Natural Resources, and Health. Permits required by local air pollution control authorities shall also be included. If a permit is required from a local government or another state agency, it shall also be included in the process at the request of an applicant.
- The Department of Ecology will be the coordinating agency for most applications. If a project, in addition to the state permits, requires local permits and the applicant requests a local government to act as the coordinating agency, the general purpose local government within whose geographic jurisdiction the largest portion of the project is physically located shall be the coordinating agency, unless the local governments with authority over the project agree otherwise.
- The coordinating agency shall be an active case manager for the application. The coordinating agency does not have the authority to issue another agency's permit or to require another to issue a permit. It shall convene a meeting between the applicant and relevant state and local agencies to coordinate the permitting process. The result of the meeting shall be a work plan with specific timelines for issuance of various permits included in the process. Maximum time limits for state permit decisions should be established by statute, recognizing that some federal statutes may limit the state's authority to set minimum time limits for particular permits. The applicant may waive those time limits when necessary. When a local government is involved, time limits should be coordinated with the local government permitting process.
- The sanction for an agency's failure to comply with the timelines is to refund any permit fees paid by the applicant to that agency.
- The coordinating agency may recover the costs it incurs in acting as a coordinating entity.

[Discussion: A number of different permits may be required from state and local government as a part of a proposed development. It may be necessary to obtain permits from several state agencies and from regional air authorities. Each agency has its own applications, timelines, and permit process.

In the early 1970s, the Legislature adopted the Environmental Coordination Procedures Act (ECPA), which was an effort to establish a single point of contact - the Department of Ecology - for state permits. ECPA has not fulfilled the promise its authors envisioned. In the last 10 years it has been seldom used. There is much speculation on the reasons for this lack of use, but a few problems are apparent in the statute's structure. ECPA provides no more than a single point of contact for state agency permits. Ecology has no direction to assist the applicant in obtaining the desired permits. The sanctions for failure to comply with the timelines established in the statute may also be too strict. An agency which fails to meet the timelines loses the authority to issue a required permit.

The Subcommittee explored the possibility of delegating to local governments responsibility for issuing all state and local permits required for a development. Some state permits may be delegated to local governments if the state establishes clear standards and criteria for the issuance of those permits. However, many state issued permits require specialized knowledge on the part of the issuing agency. In addition many state permits are required by federal law. There are potential difficulties in obtaining federal approval of further delegation to local governments. This proposal will provide for the designation of a single coordinating agency to act as an active project manager when permits from multiple state agencies or local governments are required.

California recently enacted legislation which, though similar, has important differences from ECPA. It directs an agency to act as a case manager and it requires a meeting between the applicant and the permitting agency. These appear to be important elements if a state coordinated permit system is going to be successful.]

C. Timelines for local government consolidated permit procedures.

Local governments should generally issue permits within 120 days after determining that an application is complete. The permit application process is not always straightforward. The ability of a local government to meet this timeline is dependent on cooperation from the applicant. In addition, there are some factors outside the control of local government that may delay processing on a permit. The Task Force recommends the local government not be held responsible for these periods. DCTED should provide technical assistance to local governments. The Commission established in Recommendation IX. A. should review these timelines as part of its work.

One other issue which affects this process is the liability imposed on local governments for failing to meet statutory timelines. The Task Force recommends that local governments be relieved of liability for failing to meet the timelines.

[Discussion: The Task Force believes that a local government should make its decision on a project application within a reasonable period of time. Legislation adopted in the 1994

legislative session (ESSB 6339) requires each local government to establish timelines for the issuance of permits as part of its GMA development regulations. The integration of environmental review with land use decisions (as outlined in VI. B.) should reduce the issues and time required for review. In addition, other provisions included in these recommendations, such as coordinating state and local permit processes (VII. A. and VII. B.) and consolidating appeals (VIII. A.), will reduce the delay inherent in the current decision making process.]

D. Mitigation/development agreements.

Local governments should be given explicit authority to enter into a mitigation or development agreement with a project applicant. The agreement must set enforceable standards for a project during its buildout and operation, including required environmental mitigation and the amount and timing of the payment of any impact fees. The agreement shall provide that the applicant will not be subject to changes in development regulations or other applicable regulations. The local government may require the applicant to make satisfactory progress towards completion of the project.

[Discussion: Many jurisdictions enter into specific written agreements with applicants to undertake mitigation, such as transportation mitigation agreements or monitoring agreements. These agreements provide a mutual benefit by both requiring the approved project to undertake specific measures and providing assurance to the approved project that those mitigation measures are fixed for the particular project (and hence not subject to later revisions or changed requirements). The agreement may provide options for revisiting the terms of the agreement under specific circumstances and it may require the applicant to begin construction and make progress towards completion of the project under certain timelines.]

VIII. APPEALS AND LITIGATION

A. Revise judicial review of permit decisions to provide consistent, predictable and timely review procedures

The Task Force recommends the simplification of the superior court process for review of land use decisions. The revisions should provide a uniform appeal period for all types of decisions, designate the starting point for the appeal period, clarify who are the parties and the method for service, and establish the standard for review. Judicial review should allow consolidation of appeals of local and state permits into a single court proceeding.

[Discussion: Simplifying and clarifying the current judicial review system can make substantial improvement in the timing and predictability of permit review. The writ of certiorari (review) statute should be revised or replaced to eliminate confusion and procedural traps. A uniform appeal period should be a central element of this revision. The starting point for the appeal must also be clarified. A uniform standard of review and defining parties who must be served and who may intervene are additional requirements necessary to clarify the current process.]

B. Effect of Plan or Development Regulation Invalidity.

The Task Force recommends that a comprehensive plan or development regulation which is found to be invalid should remain in effect, unless the Growth Management Hearings Board determines that continued enforcement of the plan would violate the policy of the GMA. The Board should make appropriate findings and conclusions to support this determination and should limit the effect of its determination to those portions of the plan or regulation that violate the policy of the GMA.

[Discussion: The adoption of the GMA has created a new legal issue that several members of the local government, development, and environmental community believe must be resolved. Under the GMA, a local government's development regulations must be consistent with its comprehensive plan. If a comprehensive plan is declared invalid, or if a development regulation is found to be inconsistent with the plan, the validity of any permits issued by the local government under the authority of those development regulations will be called into question.

Because there are many different circumstances in which this issue may arise, it is not possible to develop a single principle which would apply in all cases. Therefore, the Task Force is recommending giving the Growth Management Hearings Boards discretion to make the determination on a case-by-case basis. The presumption should be that the plan or regulation will remain in effect unless the Board determines this would violate the policy of the GMA.]

C. Shorelines Hearings Board Procedures.

The Shorelines Hearings Board (SHB) should be required to issue its decision on the appeal of a substantial development permit within 180 days after the appeal is filed with the board. In addition, the stay on development under the Shoreline Management Act should be modified. If a substantial development permit has been approved by the local government and by the SHB, the burden should be on the appellant in an appeal to superior court to demonstrate that the project should not proceed pending an appeal.

[Discussion: Prior to some recent statutory changes, on average it took the SHB over a year to issue a final decision on the appeal of a substantial development permit. Although the SHB has made significant improvements in its process, further improvements are necessary. The SHB should issue its decision within 180 days. This is the same period of time allowed the Growth Management Hearings Boards.

The SMA currently provides a mandatory stay of a substantial development permit pending resolution of all appeals. Current law allows the applicant to request the superior court to lift the stay if the SHB has upheld a local government decision to issue the permit. In these circumstances, the Task Force believes the burden of justifying the stay should be on the person objecting to the permit rather than on the project proponent. The stay in these circumstances should be limited to those cases in which the appellant demonstrates the potential for damage to the environment.]

D. Review of Shoreline Master Programs and Amendments

The Growth Management Hearings Boards should be given authority to review shoreline master programs and amendments for compliance with the GMA. Under VI. E., the

shoreline master program is incorporated as an element of a comprehensive plan. Development regulations adopted by a local government to implement its shoreline program will be incorporated into its GMA development regulations. The GMHBs should have authority to review the consistency of shoreline master programs and development regulations with the SMA as well as with the GMA.

[Discussion: The SHB currently has authority to review appeals of Ecology's shoreline master program decisions if the appeal is by a local government. Others may appeal Ecology's program decisions to Superior Court. The GMHBs have authority to review all local development regulations, including those which apply to the shorelines, for consistency with the GMA. Although this recommendation might slightly increase the chance that a shoreline master program might be appealed by a person other than a local government, this is balanced by providing a single forum for all appeals of local government comprehensive plans and development regulations. The standard of review for the GMHB may need to be revised.]

E. Reasonable Attorney's Fees and Costs.

Reasonable attorney's fees should be awarded to the prevailing party after the second or subsequent appeal of a local government's quasi-judicial permit decision if the first appellate body has affirmed the local government's decision. The award of fees and costs should be mandatory and based upon the actual reasonable fees incurred, but the final amount would be set by the court.

[Discussion: While it is important to assure that parties have an opportunity to ensure that decisions have been fairly made, when an impartial body, such as superior court or an appeals board, has supported a local government decision, further appeals should require the appellant to assume a meaningful measure of risk. The provision of an award of attorney's fees and costs provides this element of risk without imposing an obstacle too great for legitimate claims.]

IX. OTHER RECOMMENDATIONS

A. Further GMA Review and Evaluation.

The 1995 Legislature should establish a new commission to consider additional reforms in the state's land use laws.

[Discussion: The recommendations contained in this report are only a first step towards an integrated land use and environmental review system. Among the ideas which have been circulated for consideration is a uniform state land use code which would further simplify and streamline the permitting process in the State of Washington. While the Task Force was open to this concept, many of the fundamental changes involved in such a uniform land use system will require additional time to evaluate.

In addition, future evaluation will be based in part upon the success of the reforms recommended by the Task Force, as well as additional experience under GMA. Significant progress and momentum towards further reform has developed during the Task Force's work. In order to sustain this momentum, the Task Force believes a new body should be established by the 1995 Legislature to focus on these issues.

Two important points must be made about this recommendation. First, the recommendation for further study must not be used as an excuse for failing to take the actions recommended in this report. Second, the Legislature must assure that whatever body undertakes this study is given sufficient resources.

This new body should, among other items, consider the following questions:

- *Have the reforms proposed by the Task Force been effective?*
- *How successful have local governments been at integrating planning and environmental review?*
- *Has the time to process a development application been reduced?*
- *Has public participation in the planning process improved?*
- *Is the environment being protected?*
- *Have local governments been able to meet their capital facilities needs as identified in capital facilities plans?]*

X. ISSUES NOT ADDRESSED

The Task Force did not have time to address all of the issues which were presented to it. A number of these issues are important and should be considered in the future, either as part of the study recommended under IX. A. or in another forum.

A. Impact Fees and Concurrency

A number of unresolved issues surround the use of impact fees. These include:

- Should local governments imposing impact fees be required to use the GMA impact fee process under RCW 82.02.050 for roads, schools, fire protection, and parks? Should local governments rely on SEPA or home rule charter powers to impose impact fees?
- If SEPA authority to impose impact fees is allowed, should the fees be subject to the same requirements for imposing those fees as are impact fees imposed under GMA?
- If impact fees have been or could have been imposed, can additional concurrency standards be imposed?
- As a policy matter, should impact fees be encouraged or subject to further studies?

B. Class IV General Forest Practices Permits

Clarification would be helpful of the role and procedures for the Department of Natural Resources and local governments when there is a conversion of forest lands to non-forest uses. The three-year/six-year conversion window and penalty provisions are difficult to administer and raise numerous questions about when a conversion occurs. There are also questions about what types of review a local government can or should require when the applicant indicates there may be a conversion of forest land. For example, should the local government be allowed to require

an environmental impact statement and plat or other permits on the future non-forest uses before it approves the forest practices?

C. Role/Presumption of the GMHBs

The Task Force did not address concerns which have been expressed by some local governments about some Growth Management Hearing Board decisions. These decisions have invalidated local government decisions under the GMA and have led to the suggestion that the standard of review employed by the Boards should be changed.

D. Hydraulic Project Approvals

The Task Force considered recommending that the Department of Fish and Wildlife be allowed to delegate to local governments the authority to issue hydraulic project approvals. The Task Force recognized the close connection between local decisions on projects and conditions which are necessary to protect fish and wildlife. There is a need for closer coordination between the state and local governments in this area. The Task Force concluded that delegation to local governments was unlikely to produce satisfactory results.

E. State Wetlands Integration Strategy

The Task Force followed the State Wetlands Integration Strategy (SWIS) process and results. The SWIS process appeared to be a thorough, well-run program dealing with a large number of groups and interests on a very controversial subject. The Task Force did not address the substantive standards for wetlands. The Task Force limited itself to an amendment to the SMA to make the definition of "wetlands" consistent with the definition in GMA. The Task Force did address the issue of critical areas in a more global way by including a requirement that local governments consider the "best available science" when adopting their critical areas ordinances. (See Recommendation VI. B.)

Appendices

A. Task Force Interim Summary & 1993 Interim Report

B. Side by Side, Governor Lowry's Veto Message

C. June 1994 Executive Order

D. Public Hearing Summary

E. Technical Assistance - Maximizing Voluntary Compliance

F. Agency Approval for Flexibility

G. Administrative Procedures Act Amendments

- **Negotiated and Pilot Rule-making Amendment**
- **Standardizing Process for Petitions for Rule-making**
- **Rule Adoption Amendments**
- **Expedited Rule Repeal Procedures**

H. Standardized form "Petition for Repeal or Amendment of an Administrative Rule"

Appendix A

1. Task Force Interim Summary

2. Task Force December 1993 Interim Report

Appendix A:

Grants of Authority by the Legislature

1993 Interim Report
Recommendations

Action Taken:

Senate Floor Resolution
Adopted

Executive Order 94-07 requires
OFM to review agency bill
requests.

EO 94-07 requires fiscal notes to
identify costs associated with
rule adoption.

None

Task Force Interim Summary

Purpose:

To improve the clarity and comprehensiveness of legislative intent clauses and provide more specific direction to those involved in the rule-making process.

Recommended Action:

- 1 Recommend to the Legislature that beginning in 1994 it have the standing committees review all existing grants of authority and purpose statements and, where appropriate, propose legislation to clarify, narrow, or repeal such grants and statements, with reference to the criteria identified in #3 below.
- 2 Recommend to the Legislature that legislation granting rule-making authority to agencies include specific guidelines and direction (including more comprehensive purpose statements) to the agencies charged with drafting such rules. Among the steps that could be taken are mandatory training for all bill drafters, a revision to the Code Reviser's Bill Drafting Manual, or legislative rules which would require staff to check off on the standing committee report whether the bill has an intent clause and whether specific criteria are established for any rule-making authority granted.
- 3 Recommend to the Legislature a requirement that a "regulatory note" be prepared as part of the committee bill report. This regulatory note would identify new rule-making authority anticipated to be embodied within the proposed legislation, agencies to which new rule-making authority would be delegated, and a description of any other agencies with related rule-making authority.
- 4 Recommend to the Legislature that as part of such a regulatory note there be a checklist confirming that the committee addressed the following questions, where appropriate:

Administrative Procedures

1993 Interim Report Recommendations

Action Taken:

Passed

**EO 94-07 requires agency to
consider rule adoption factors
when adopting rules.**

Passed

Passed

Purpose:

To make rules more appropriate and effective by requiring that agencies consider certain factors and respond to testimony during the rule-making process.

Recommended Action:

Recommend to the Legislature that it revise the Administrative Procedures Act (APA) as follows:

- 1. Require agencies, as part of the rule adoption process, to consider comments prior to adopting a rule and to prepare a responsiveness summary that responds substantively and by categories to comments received, is placed in the record, and is sent to any person who has commented or otherwise requested a copy.**
- 2. Establish the following criteria that agencies must consider in adopting a rule which has a direct impact on the public. The agency must describe its consideration of these criteria. This description would become part of the rule-making file.**

Require that the Governor oversee the use of emergency rule-making authority.

The Governor should direct agencies to use the pre-proposal scoping process already authorized by the APA to gather input from stakeholders prior to formally proposing significant rules.

Improve the BAC Capacity to Assist Small Business

**1993 Interim Report
Recommendations**

Action Taken:

EO 94-07 establishes this as
policy.

Passed

None

Purpose:

To increase the capacity of the Business Assistance Center to provide regulatory assistance to businesses and guidance, coordination, and training to state agencies for improving the quality and consistency of regulatory processes.

Recommended Action:

1. Strengthen communication and outreach to businesses by working with state agencies to develop a user-friendly, coordinated approach to providing businesses with information about all rule-making activity taking place in the state; explore the expanded use of advanced technology to make detailed regulatory information accessible to businesses; and develop state agency guidelines for the review of agency forms.
2. Support the rule-making training curriculum developed by the BAC's Interagency Regulatory Fairness Task Force, and expand training to local services delivery providers to enhance direct technical assistance to businesses.
3. Develop and implement an interagency, targeted industries technical assistance pilot project

Regulatory Impact Statements

1993 Interim Report
Recommendations

Action Taken:
Passed

Not passed

Passed

Passed

Passed

Passed

Passed

Purpose:

Ensure that the economic effects on small business are adequately considered during rule-making.

Recommended Action:

1. Redefine "industry" as businesses in any one four-digit SIC Code (versus three-digit) as published by the United States Department of Commerce. If these data are not available because of confidentiality, agencies should be required to use the most detailed SIC breakdown for which data are publicly available.
2. Make the requirement of a small business economic impact statement applicable to all rules which have impact on small business, not just applicable to those rules which have more than a "minor" or "negligible" impact as now is required.
3. Ensure that the statements are prepared by agencies prior to the actual decision to propose a rule (rather than subsequent to that decision), and include in such statements the steps that the agency intends to take to mitigate the rule's impact on small businesses.
4. Encourage agencies to use committees pursuant to RCW 34.05.310. Appropriate industry and agency representatives will assist in analyzing costs of compliance and identifying steps that can be taken to minimize the cost impact on small businesses.
5. Clarify Legislative intent by stating that the intent is to reduce the economic impact of state rules on Small Businesses.
6. Allow agencies to use both existing and new data gathering methods in the preparation of SBEIS's. Current law requires only that "existing" data be used.
7. Add a provision to RCW 19.85.040 to include as part of an SBEIS the mitigation options considered by the agency and an explanation for each option not included in the rule. Amend the statute to allow agencies to use mitigation techniques beyond the four currently specified.

Standardized Forms

1993 Interim Report
Recommendations

Action Taken:

Legislature directed BAC to do a study.

Purpose:

To reduce paperwork.

Recommended Action:

Recommend to the Legislature that it require all state, county, and city agencies to standardize their forms by having one standard format for basic information. Different forms for different purposes would each include a common cover sheet with basic information.

Standardized Forms

**1993 Interim Report
Recommendations**

Action Taken:

Legislature directed BAC to do a study.

Purpose:

To reduce paperwork.

Recommended Action:

Recommend to the Legislature that it require all state, county, and city agencies to standardize their forms by having one standard format for basic information. Different forms for different purposes would each include a common cover sheet with basic information.

Technical Assistance Without Penalty

1993 Interim Report
Recommendations

Action Taken:

EO 94-07 contains similar provisions to all of the recommended actions.

Purpose:

To gain greater regulatory compliance with less conflict.

Recommended Action:

Recommend to the Legislature and the Governor as appropriate that they require:

1. Each agency to designate one or more technical assistance representative(s) to coordinate voluntary compliance and provide technical assistance concerning compliance with the agency's laws and regulations.
2. Requests for technical assistance will initiate a consultation and education process, not immediate enforcement. Technical assistance representatives will not issue orders or assess penalties.
3. On site consultations by technical assistance representatives will not be regarded as inspections or investigations and no citations or orders will be issued. Representatives will inform the owner or operator of violations which are observed.
4. If the owner or operator of the facility does not correct the observed violations within a reasonable time the agency may inspect the facility and take appropriate enforcement action. If a representative observes a violation of the law that places a person in danger or is likely to cause physical damage to the property or others, or cause significant environmental harm the agency may initiate enforcement action immediately upon observing the violation.

Joint Administrative Rules Review Committee

1993 Interim Report Recommendations

Action Taken:

Passed

Passed

Passed

Passed

Vetoed

Purpose:

To strengthen legislative oversight of rule-making to assure consistency with legislative intent.

Recommended Action:

Recommend to the Legislature that it strengthen the JARRC by:

1. Amending the current requirement of a two thirds vote of JARRC members to vote in favor of a recommendation to suspend a rule to a majority of the members.
2. Adding a provision such that if the Governor declines to suspend the rule after the majority (currently two thirds) JARRC vote, the JARRC finding would be transmitted to the agency and would trigger automatically a petition to repeal the rule in question pursuant to RCW
3. Within sixty days, pursuant to RCW 34.05.330, the agency would have to commence rule repeal proceedings (or proceedings to amend appropriately the rule) or state why no such proceedings would be commenced. The legislation would specify that included in any statement declining to repeal the rule the agency must state why the rule is within the scope of its statutory authority.
4. Expanding JARRC authority to review rules for compliance with statutory procedures.
5. Allowing JARRC, by a two-thirds vote, to create a rebuttable presumption that a regulation was adopted without authority for purposes of any judicial proceeding in which

Review Existing Rules

1993 Interim Report
Recommendations

Action Taken:

Undertaken

Purpose:

To create an ongoing mechanism for identifying, reviewing, and repealing or amending existing regulations that are obsolete, duplicative, conflicting, or otherwise unnecessary.

Recommended Action:

1. Establish a Task Force subcommittee that will:
 - a. initiate the rules review process by identifying a priority list of rules for review in 1994, such identification to include a means by which the public can nominate rules for the subcommittee to consider:
 - b. formulate a realistic ongoing process for reviewing existing rules.
 - c. prepare a draft of the on-going rules review process quickly so that the Task Force can recommend it to the Governor in time to identify resource needs in the budget.
2. Recommend that the Legislature amend the APA to provide for a rules review by the Governor. The existing APA allows for any person to petition for agency review of rules. The amendment will provide any person who unsuccessfully seeks an agency repeal to petition the Governor for the repeal or readoption of such rule.

Performance Reporting

1993 Interim Report Recommendations

Action Taken:

Undertaken

Purpose:

To improve the timeliness, consistency, and responsiveness of state agency administration of regulation by analyzing and reporting the results of regulatory reform initiatives.

Recommended Action:

Propose that OFM report performance of state agencies regarding implementation of Executive Order 93-06 and other regulatory reform activities by:

1. Dedicate staff to monitor regulatory reform efforts and report the results. The office will work closely with agencies to determine baseline statistics (e.g. permit flow time, appeals rates, overturn rates) against which to measure how well reform efforts are accomplishing their objectives.
2. Publishing a periodic report outlining the results of implementing other reform initiatives. The staff will also serve as a regulatory ombudsman for the public, providing a hotline for access and incorporating what it learns into the periodic report.

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1993 Interim Report Recommendations

Action Taken:

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2. Publishing a periodic report outlining the results of implementing other reform initiatives. The staff will also serve as a regulatory ombudsman for the public, providing a hotline for access and incorporating what it learns into the periodic report.

Subcommittee to Consider Alternative Approaches

**1993 Interim Report
Recommendations**

Action Taken:

Undertaken

Purpose:

To consider alternatives to command and control to achieve compliance with improved public acceptance.

Recommended Action:

1. Establish a subcommittee of the Task Force to study market and performance incentives as alternatives to command and control approaches.
2. Environmental protection, workplace safety, and resource preservation are among the areas to be addressed. The study should include education and technical assistance programs, and economic incentives and disincentives such as reducing pollution permit fees for those who exceed pollution reduction standards. Administrative and Legislative recommendations are needed for implementation.
3. The subcommittee should explore the following alternative approaches: 1) market incentives such as wetlands mitigation or developments rights transfer programs, 2) integrated permits that cover multiple environmental rules such as air pollution and water quality permits, 3) pollution prevention programs, 4) increased technical assistance to those subject to regulations, and 5) public and consumer education.
4. The subcommittee should draw upon the experience and expertise available in the private sector and state agencies that are beginning to develop alternative approaches and coordinate with the private sector and Business Assistance Center.

Subcommittee to Consider Alternative Approaches

**1993 Interim Report
Recommendations**

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4. The subcommittee should draw upon the experience and expertise available in the private sector and state agencies that are beginning to develop alternative approaches and coordinate with the private sector and Business Assistance Center.

Integration of GMA, SEPA, SMA and Others

**1993 Interim Report
Recommendations**

Action Taken:

Undertaken

Purpose:

To determine how to consolidate land use and environmental laws to reduce cost and complexity without harming the environment and to establish the long range context within which short-term actions can be taken.

Recommended Action:

1. Study SEPA, the GMA, SMA, and all other land use and environmental laws related to construction and resource use to determine how all aspects of environmental protection, land use, appeals and litigation processes can be integrated.
2. Review state, federal, and federally delegated permit programs, local land use laws, and the need for coordination in these processes to ensure strict time lines for permit decisions.
3. Prepare recommended legislation for consideration by the legislature in 1995.
4. Give appropriate notice to governments planning under the GMA that the results of this Task Force study guide and affect development regulations to be adopted under the GMA.
5. In the short term, initiate the legislative and regulatory changes on the following pages which are recommended for action in 1994.

Uniform Requirements for Development Regulations

1993 Interim Report
Recommendations

Action Taken:

Passed

Passed

Passed, with a 20 day provision.

Purpose:

Establish uniform requirements for cities and counties adopting development regulations under the GMA.

Recommended Action:

Recommend to the Legislature amendments to the GMA and other pertinent statutes to:

1. Require local governments to include in their development regulations a timely and predictable permit process for complete applications deemed to be consistent with adopted GMA plans and regulations.
2. Require local governments to specify the contents of a complete application in their development regulations adopted to implement their GMA plans.
3. Require all local governments to provide written notice to applicants, within 10 days following the filing of a permit application, of the following:
 - a. if the application is complete, or
 - b. if the application is incomplete, then what is necessary to make it complete.

GMA Appeals Process

1993 Interim Report
Recommendations

Action Taken:

Passed

Not passed

Passed

Purpose:

Amend the GMA to simplify the appeals process for review of GMA interim growth areas plans and development regulations.

Recommended Action:

Recommend to the Legislature:

1. An amendment to RCW 36.70A.290 to clarify that the 60-day appeal period also applies to petitions to the Boards alleging that a state agency, county or city is not in compliance with SEPA as it relates to the GMA plans and regulations.
2. An amendment to RCW 36.70A.300 and the APA to remove Thurston County Superior Court from the appeals process and provide for direct appeals of the Board's actions to the Court of Appeals where they can be consolidated with appeals from the parallel cases which must be filed in local superior courts.
3. An amendment to GMA to authorize the GMA Hearing Boards to appoint hearing examiners and to allow the hearing examiners to make final decisions on behalf of the Boards.

SEPA Appeals

1993 Interim Report Recommendations

Action Taken:

Passed

Not passed

Purpose:

Provide for a single SEPA appeal hearing on procedural issues.

Recommended Action:

Recommend to the Legislature amendments to RCW 43.21C.075 as follows for jurisdictions that provide for SEPA appeals on procedural issues:

- 1. To require that SEPA appeal hearings on procedural issues be conducted by a hearing examiner (unless the jurisdiction does not have a hearing examiner) who shall make a final decision; and**
- 2. To require that any further SEPA appeal on procedural issues shall be to Superior Court.**

SEPA Appeals

1993 Interim Report Recommendations

Action Taken:

Passed

Not passed

Purpose:

Provide for a single SEPA appeal hearing on procedural issues.

Recommended Action:

Recommend to the Legislature amendments to RCW 43.21C.075 as follows for jurisdictions that provide for SEPA appeals on procedural issues:

- 1. To require that SEPA appeal hearings on procedural issues be conducted by a hearing examiner (unless the jurisdiction does not have a hearing examiner) who shall make a final decision; and**
- 2. To require that any further SEPA appeal on procedural issues shall be to Superior Court.**

Model Toxics Control Act

1993 Interim Report Recommendations

Action Taken:

Passed

Purpose:

Exempt remedial actions conducted under DOE approval pursuant to the Model Toxics Control Act (RCW ch. 70.105D) from the procedural requirements of state and local environmental and land use laws.

Recommended Action:

1. Recommend to the Legislature an amendment to the Model Toxics Control Act to add language similar to that formerly found in RCW 70.105B.250, which was repealed by Initiative 97. The amendment should exempt remedial actions only from the procedural, not the substantive, provisions of state and local environmental and land use laws. This amendment should be broad enough to exempt all DOE-supervised cleanups now authorized by the Model Toxics Control Act.
2. Amendments also may be required to Chapters 43.21C, 70.94, 70.105, 90.03, 90.44, 90.48, 90.58 and 90.62 RCW, to provide exemptions from the procedural requirements of these laws.

SEPA/GMA Integration

1993 Interim Report Recommendations

Action Taken:

Done

Done

Not done

Not done

Purpose:

Integrate the SEPA and GMA processes to ensure deference to GMA plans and regulations.

Recommended Action:

1. Direct the Department of Ecology and the Department of Community Development to adopt uniform regulations pursuant to RCW 43.21C.110 and RCW 36.70A.190 to provide a model for programmatic EIS's which will satisfy the GMA requirements for SEPA compliance to ensure that the SEPA review is adequate to support the adoption of the plans and regulations.
2. Develop one or more local government pilot projects to demonstrate the integration of environmental factors into the adoption of the GMA plans and development regulations so that once the development regulations are adopted they can provide the new regulatory framework for the review of projects and the issuance of permits, thereby enabling local governments to raise threshold levels or exempt projects from additional SEPA review.
3. Provide funds, within existing revenues, to expand the technical assistance provided by DCD to counties, cities, and towns to meet the requirements of the GMA. The assistance would primarily be for smaller communities which lack adequate staff or the resources to hire additional staff to meet these requirements.
4. Provide funds, within existing revenues, as seed money to establish a program of circuit riding staff (to be provided by larger counties and cities by contract under the Interlocal Cooperation Act) to permit smaller communities to meet their responsibilities under the GMA. The circuit riding staff could include both planning staff and hearing examiners.

GOVERNOR'S TASK FORCE
ON
REGULATORY REFORM

INTERIM REPORT AND RECOMMENDATIONS

DECEMBER 17, 1993

Distributed by:
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Insurance Building
P.O. Box 43113
Olympia, WA 98504-3113

**Governor's Task Force on Regulatory Reform
Interim Report and Recommendations**

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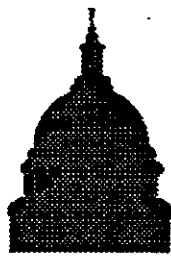
Attachments:

Attachment A: Executive Order, EO 93-06

Attachment B: Information Developed by The Governor's Task Force on Regulatory Reform

Attachment C: Groups & Individuals who provided written information to the Task Force

Attachment D: Regulatory Reform, Some of the Alternatives



STATE OF WASHINGTON
GOVERNOR'S TASK FORCE ON REGULATORY REFORM
INSURANCE BUILDING, PO BOX 43113 OLYMPIA, WASHINGTON 98504-3113 (206) 586-5344

December 17, 1993

The Honorable Mike Lowry
Governor, State of Washington
P.O. Box 40001
Olympia, Washington 98504-0001

Dear Governor Lowry:

Enclosed is the Governor's Task Force on Regulatory Reform interim report and recommendations called for in Executive Order 93-06. These changes will contribute to improved state and local government regulation, but we also recognize that there is much more to do.

We look forward to your reaction to these proposals and will assist in any way possible to pursue the legislation called for in our report. The Task Force is hard at work preparing a detailed work plan for 1994 wherein we intend to address:

- Integration of SEPA/GMA and other land use laws.
- Further improvements to rule-making including alternatives to command and control approaches to regulation.
- Measurements of regulatory performance
- Alternative Dispute Resolution concepts.
- Review of existing rules.

Task Force members frequently restate your direction that we not harm the environment or otherwise diminish public protections. I am confident we are carrying out your directive in that regard.

Your personal attention, time, and participation in these issues are very much appreciated.

Thank you,

Karen Lane, Chair

Members: Karen Lane, Chair, The Honorable Ann Anderson, Mark Brown, Rodney L. Brown, Elaine Davis, Mayor Tim Douglas, Robert J. Drewel, Ruta Fanning, Andre Gay, Thomas Goeltz, Ron Judd, Ronald Kiracofe, Wallace Loh, Casey McKinney, The Honorable Ron Meyers, The Honorable Bill Reams, Mary Riveland, Susan Schmoll, The Honorable Betti Sheldon, Walter Toner Jr., Mike Williams, Jim Worthington

**Governor's Task Force on Regulatory Reform
Interim Report and Recommendations
December 17, 1993**

Introduction

The Governor's Task Force on Regulatory Reform was created by Executive Order 93-06 (Attachment A) and asked to address the following questions:

- A. How should the state's environmental and growth management requirements and processes be integrated so that the goals of environmental protection, orderly and planned growth, and sustained economic development are achieved?
- B. What improvements should be made in project approval, permitting, and appeals processes and structures to make them faster and simpler without undercutting environmental protection?
- C. In addition to actions directed by this executive order, what other mechanisms, structures, and procedures should be instituted to achieve better coordination and consistency in regulatory actions within agencies, between agencies, and between jurisdictions?
- D. Are there effective performance-based, market-based, and other regulatory models that will achieve more efficient and effective regulation than current command and control and technology-based regulatory approaches?
- E. In addition to actions directed by this executive order, are there other ways to expand the use of alternative decision making and dispute resolution models designed to reach consensus and resolve conflict on regulatory issues without resorting to litigation?
- F. Is there a need to amend the state's Administrative Procedure Act or related statutes that would lead to more reasonable, efficient, timely, cost-effective, and coordinated rule-making and adjudication?

The twenty two members include representatives of business, agriculture, labor, environmental groups, cities, counties, state agencies, and the Legislature. The Office of Financial Management provides staff support.

The Governor requested interim recommendations by December 1, 1993 with more comprehensive conclusions and recommendations by December, 1994.

Process

State and local government regulation is a vast topic. Before identifying solutions the Governor's Task Force on Regulatory Reform set about to describe the problem. Experts were invited to address the Task Force, Task Force members identified regulatory issues and needs and interest groups and the public were given opportunities to testify. Attachment B contains information provided by Task Force members on October 7 in response to four questions:

- What causes these issues to be before us now?
- What are the characteristics of "good" regulation?
- What measures will indicate performance?

- What is the problem the Task Force should address?

Their responses, identified in Attachment B, provided a framework for subsequent discussions of the Task Force.

Members, interest groups, state agencies and the public were asked to submit recommendations for regulatory improvement. The Task Force has received nearly 50 written proposals from a wide variety of sources. Attachment C is a list of those who have provided written material to the Task Force, information that has been most helpful in the work to this point. The ideas were grouped by subject matter as shown in Attachment D. This list of alternatives is representative of the issues raised, not all inclusive.

In order to meet the December 1993 deadline the Task Force identified those proposals ready for early action. Considerations included the completeness with which the proposal is defined, the degree of member consensus, and the impact that the change will have in improving regulation. Staff drafted concept papers covering the topics identified by the Task Force as having near term priority. After considerable deliberation, the Task Force recommends legislation and executive action to:

1. Encourage more specific legislative policy direction.
2. Ensure that legislators and rule makers be better informed of the expected impacts of their decisions.
3. Reduce paper work and provide technical assistance to the public.
4. Strengthen legislative oversight of new rules and initiate a review of existing rules.
5. Analyze and monitor the results of state regulatory reform initiatives.
6. Clarify and simplify appeals procedures of SEPA and GMA.
7. Exempt Dept. of Ecology supervised toxic waste site cleanups from cumbersome procedural requirements.

Task Force members believe that for true regulatory reform to occur, we must clarify and change the process from beginning to end, including specified legislative intent, rule-making that implements that intent, analyzing the results, and evaluating whether the law and rules have the desired effect.

Future Governor's Task Force on Regulatory Reform Workplan

The interim recommendations are only a start. The Task Force is working with environmental and land use experts from business, environmental groups, local government, and agencies to integrate SEPA, GMA, and other environmental and development related laws. OFM has hired an expert in alternative dispute resolution techniques to assist agencies and provide recommendations on any legal or administrative changes that may be useful.

Next year's workplan also calls for study of alternative approaches to command and control regulation, and additional review of existing rules, including the overlap of Federal rules with state and local government.

The Governor's Task Force on Regulatory Reform looks forward to continuing its work to develop recommendations to reduce the complexity and cost of today's regulation without negatively impacting the environment, workplace safety, or general health and welfare.

Grants of Authority by the Legislature

Purpose:

To improve the clarity and comprehensiveness of legislative intent clauses and provide more specific direction to those involved in the rule-making process.

Nature of the Problem:

Agencies derive rule-making authority from several places. First is the enabling statute, which often provides broad authority to write rules. The enabling statute, coupled with a broad intent statement in substantive law, can be used as a basis for adopting new regulatory requirements. Several state agencies have fairly liberal authority to adopt rules. For example, the Department of Ecology's enabling statute states, in RCW 43.21A.080, "The director of the department of ecology is authorized to adopt such rules and regulations as are necessary and appropriate to carry out the provisions of this chapter."

Second, specific authority may be granted by the legislature as part of a substantive statute. This authority may or may not provide clear direction to the agency and adequately express legislative intent.

Two general approaches are necessary to address these concerns. First, there needs to be a review of previously enacted laws which include grants of authority and purpose statements to determine which should be amended. Second, to avoid the problem for future legislation, the Legislature should take certain steps to insure both that future statutes provide clearer direction to agencies regarding rule-making and that the Legislature understand the magnitude of anticipated rule-making and the estimated impacts on agencies of proposed legislation.

Recommended Action:

1. Recommend to the Legislature that beginning in 1994 it have the standing committees review all existing grants of authority and purpose statements and, where appropriate, propose legislation to clarify, narrow, or repeal such grants and statements, with reference to the criteria identified in #3 below.
2. Recommend to the Legislature that legislation granting rule-making authority to agencies include specific guidelines and direction (including more comprehensive purpose statements) to the agencies charged with drafting such rules. Among the steps that could be taken are mandatory training for all bill drafters, a revision to the Code Reviser's Bill Drafting Manual, or legislative rules which would require staff to check off on the standing committee report whether the bill has an intent clause and whether specific criteria are established for any rule-making authority granted.

.....continued on next page

Grants of Authority by the Legislature

3. Recommend to the Legislature a requirement that a "regulatory note" be prepared as part of the committee bill report. This regulatory note would identify new rule-making authority anticipated to be embodied within the proposed legislation, agencies to which new rule-making authority would be delegated, and a description of any other agencies with related rule-making authority.
4. Recommend to the Legislature that as part of such a regulatory note there be a checklist confirming that the committee addressed the following questions, where appropriate:
 - a. Need Does the law respond to a specific, identifiable need? Is government the most appropriate vehicle to address this need?
 - b. Purpose Is the intent of this law clear? Is the state or local government entity charged with carrying it out identified?
 - c. Evaluation Has the Legislature identified specific measurable outcomes that the law should achieve? Is an evaluation process identified?
 - d. Interested parties Has adequate collaboration occurred with all those affected (including the public, the regulated, and the regulators)?
 - e. Cost Have the costs of compliance and administration been estimated? Will the law achieve the goal with minimum cost and burden? Has the cost of not adopting the legislation been considered?
 - f. Compliance Does the law inspire voluntary action?
 - g. Clarity Is the law written concisely and void of ambiguities?
 - h. Conflicts Does the proposal conflict with existing statutes and, if so, does it resolve the conflict?

Administrative Procedures

Purpose:

To make rules more appropriate and effective by requiring that agencies consider certain factors and respond to testimony during the rule-making process.

Nature of the Problem:

Under existing procedure agencies are not required to respond to testimony presented in required hearings prior to rule adoption. This frustrates persons attempting to influence the rule-making process since inadequate attention is given by some agencies to possible consequences and alternatives to the rules.

There exists a further concern that agencies are not making adequate effort to ensure that new rules do not conflict with or duplicate existing rules (either their own or those of another agency) or are not considering adequately whether state rules more stringent than existing federal rules on the same subject are necessary. No criteria exist by which agencies must formally evaluate proposed rules.

There also is concern that some agencies use the emergency rule-making authority to short circuit the existing more elaborate permanent rule-making processes.

Recommended Action:

- A. Recommend to the Legislature that it revise the Administrative Procedures Act (APA) as follows:
 1. Require agencies, as part of the rule adoption process, to consider comments prior to adopting a rule and to prepare a responsiveness summary that responds substantively and by categories to comments received, is placed in the record, and is sent to any person who has commented or otherwise requested a copy.
 2. Establish the following criteria that agencies must consider in adopting a rule which has a direct impact on the public. The agency must describe its consideration of these criteria. This description would become part of the rule-making file.

<ol style="list-style-type: none">a. Authorizedb. Necessaryc. Economic & Environmental Consequences	<p>The law permits or obligates the agency to adopt the rule.</p> <p>There is a need for the rule.</p> <p>The agency has evaluated the economic and fiscal consequences of the rule (or failure to adopt the rule), especially the extent to which these consequences fall disproportionately on small businesses, and has complied with chapter 43.21H RCW (State Economic Policy Act) and 43.21C (State Environmental Policy Act.)</p>
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....continued on next page

Administrative Procedures

- d. **Consistent** The rule is consistent with existing state rules and statutes (does not conflict or duplicate) and resolves conflicts with other rules.
 - e. **Least Burdensome** There was consideration of alternatives to regulation or to the particular rule, including the no action alternative, that would serve the same purpose at a lesser cost.
 - f. **Federal Mandates** The agency describes the basis for, and articulates the costs and benefits of, any differences with any federal rules on the same subject. *(See comment below.)*
 - g. **Equity** Where applicable, the agency must describe any differences in the application of the rule to public and private entities and describe the reasons why.
 - h. **Measurable** The agency writes the rule such that it can be determined whether the rule achieves the purpose for which it is intended.
3. Require that the Governor oversee the use of emergency rule-making authority.
- B. The Governor should direct agencies to use the pre-proposal scoping process already authorized by the APA to gather input from stakeholders prior to formally proposing significant rules.

Comment:

Regarding recommendation A.2.f., above, the Task Force struggled with additional language for a solution to the problem experienced by many businesses which face inconsistent state and federal rules. Such inconsistency not only causes confusion within this state for businesses but frequently makes doing business in more than one state difficult.

Given the deadlines under which the Task Force has operated, the Task Force was unable to reach agreement on language. However, the sense of the Task Force was that the decision of whether or not a given state agency should impose by rule standards more strict than those imposed by the federal government is a significant policy decision which should be made by the legislature, not by the rule-making agencies.

The legislature should in its review of existing delegations of rule-making authority consider whether it should permit agencies to go beyond federal standards or whether it should limit those agencies to federal standards only. Likewise, in the future, the legislature should be clear in its delegations of rule-making authority whether as a matter of public policy agencies should be constrained to adopting standards no more stringent than the federal standards.

Footnote: See pages 10 and 11 on rules review for additional changes to APA.

Improve the Business Assistance Center Capacity to Assist Small Business

Purpose:

To increase the capacity of the Business Assistance Center to provide regulatory assistance to businesses and guidance, coordination, and training to state agencies for improving the quality and consistency of regulatory processes.

Background:

Created in 1987, the Business Assistance Center has continuously expanded the amount and types of services provided to businesses and state agencies, even though the Center's resources for staffing and operation have been reduced significantly over the past two years.

In 1992, the BAC's Interagency Task Force on Regulatory Fairness found that there was a need to improve rule-making training, and state agency communication and outreach to businesses. The BAC needs additional resources to embark on this expansion.

Currently, the BAC is testing a new approach to providing interagency technical assistance to businesses in the forest products industry to increase compliance with safety standards enforced by the Department of Labor and Industries. If successful, this targeted sector approach to technical assistance will result in written guidelines for small forest products firms and could be used as a technical assistance model for other industries. To publish these guidelines and to expand to other industries, the BAC needs additional resources to provide interagency coordination and to produce materials for targeted industries.

Recommended Action:

1. Strengthen communication and outreach to businesses by working with state agencies to develop a user-friendly, coordinated approach to providing businesses with information about all rule-making activity taking place in the state; explore the expanded use of advanced technology to make detailed regulatory information accessible to businesses; and develop state agency guidelines for the review of agency forms.
2. Support the rule-making training curriculum developed by the BAC's Interagency Regulatory Fairness Task Force, and expand training to local services delivery providers to enhance direct technical assistance to businesses.
3. Develop and implement an interagency, targeted industries technical assistance pilot project.

Regulatory Impact Statements Improving the Regulatory Fairness Act

Purpose:

Ensure that the economic effects on small business are adequately considered during rule-making.

Nature of Problem:

The Regulatory Fairness Act was passed in 1982 in an effort to help provide economic relief for small businesses from costly government regulation.

For proposed rules that have more than a "minor or negligible impact" and which affect more than 20% of all industries or more than 10% of any one industry the agency must prepare a Small Business Economic Impact Statement (SBEIS) to accompany the proposed rule when it is filed with the Code Reviser.

Currently there are several problems and concerns with the existing SBEIS requirement. First, there is a lack of uniformity in how such statements are being developed. Although the Business Assistance Center (BAC) has published a useful set of guidelines pursuant to the Act, there is a perceived need that more specificity be included in statute as well. Further, there is a need to broaden the threshold for the preparation of an impact statement by redefining industry to smaller units. Currently, "industry" is defined by the three-digit Standard Industrial Classification (SIC) Code. There also exist subsets of those three-digit codes, *i.e.* four-digit codes, which more precisely define useful categories of industry for purposes of the impact statement requirement.

Recommended Action:

Recommend to the Legislature that it amend the Regulatory Fairness Act to do the following:

1. Redefine "industry" as businesses in any one four-digit SIC Code (versus three-digit) as published by the United States Department of Commerce. If these data are not available because of confidentiality, agencies should be required to use the most detailed SIC breakdown for which data are publicly available.
2. Make the requirement of a small business economic impact statement applicable to all rules which have impact on small business, not just applicable to those rules which have more than a "minor" or "negligible" impact as now is required.
3. Ensure that the statements are prepared by agencies prior to the actual decision to propose a rule (rather than subsequent to that decision), and include in such statements the steps that the agency intends to take to mitigate the rule's impact on small businesses.

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Regulatory Impact Statements Improving the Regulatory Fairness Act

4. Encourage agencies to use committees pursuant to RCW 34.05.310. Appropriate industry and agency representatives will assist in analyzing costs of compliance and identifying steps that can be taken to minimize the cost impact on small businesses.
5. Clarify Legislative intent by stating that the intent is to reduce the economic impact of state rules on Small Businesses.
6. Allow agencies to use both existing and new data gathering methods in the preparation of SBEIS's. Current law requires only that "existing" data be used.
7. Add a provision to RCW 19.85.040 to include as part of an SBEIS the mitigation options considered by the agency and an explanation for each option not included in the rule. Amend the statute to allow agencies to use mitigation techniques beyond the four currently specified.

Standardized Forms

Purpose:

To reduce paperwork.

Nature of the problem:

State, county, and city agencies have a variety of forms and applications that are required to be completed by applicants for permits, licenses, approvals, and services. Much of the information required is duplicative from one form to another. Filtering out multiple forms with the same information is an unnecessary burden for the public.

Recommended Action:

Recommend to the Legislature that it require all state, county, and city agencies to standardize their forms by having one standard format for basic information. Different forms for different purposes would each include a common cover sheet with basic information.

Comment:

City and county officials have expressed an interest in developing models of standardized forms to be used by cities and counties.

Technical Assistance Without Penalty

Purpose:

To gain greater regulatory compliance with less conflict.

Nature of the problem:

The traditional means of gaining regulatory compliance through command and control has resulted in significant ill will by the public towards government. It is sometimes difficult for those needing to comply with regulations to understand what is required. People fear that if they ask the regulatory agency for assistance and advice, they may receive a citation, fine, or immediate compliance order.

Regulatory agencies, under current regulations, may have rigid guidelines for enforcement. Once an inspector finds a violation then if he or she fails to issue a citation or order, liability accrues to the government and personal risk back to the inspector.

Both the inspector and the public are caught in this rigid system which discourages communication and helpfulness.

Recommended Action:

Recommend to the Legislature and the Governor as appropriate that they require:

1. Each agency to designate one or more technical assistance representative(s) to coordinate voluntary compliance and provide technical assistance concerning compliance with the agency's laws and regulations.
2. Requests for technical assistance will initiate a consultation and education process, not immediate enforcement. Technical assistance representatives will not issue orders or assess penalties.
3. On site consultations by technical assistance representatives will not be regarded as inspections or investigations and no citations or orders will be issued. Representatives will inform the owner or operator of violations which are observed.
4. If the owner or operator of the facility does not correct the observed violations within a reasonable time the agency may inspect the facility and take appropriate enforcement action. If a representative observes a violation of the law that places a person in danger or is likely to cause physical damage to the property or others, or cause significant environmental harm the agency may initiate enforcement action immediately upon observing the violation.

Joint Administrative Rules Review Committee

Purpose:

To strengthen legislative oversight of rule-making to assure consistency with legislative intent.

Nature of Problem:

The Washington State Joint Administrative Rules Review Committee (JARRC) is charged with the responsibility of reviewing proposed and existing rules to determine whether they conform with the intent of the statutes they purport to implement.

Under the current JARRC process, a copy of all proposed rules is transmitted to staff of the appropriate standing committees in the Senate and House for preliminary examination. The standing committee staff reviews these rules to determine whether a JARRC review is necessary. A formal request for committee review must be made by a legislator. Interested parties may seek out a legislator to present the request. If the issue cannot be resolved informally and goes to a formal hearing before the JARRC, the JARRC may, by majority vote, find that the rule is not within the scope of authority for the agency. JARRC may attempt to persuade the rule-making agency to revise the rule by publishing a notice in the Washington State Register that a rule does not reflect original legislative intent. Also, by a two-thirds vote, JARRC may recommend that the Governor suspend the rule. If the Governor makes the decision to suspend, such suspension is effective until ninety days after the end of the next regular legislative session.

Many argue that JARRC lacks the resources and enforcement powers to provide effective legislative oversight of the rule-making process.

Recommended Action:

Recommend to the Legislature that it strengthen the JARRC by:

1. Amending the current requirement of a two thirds vote of JARRC members to vote in favor of a recommendation to suspend a rule to a majority of the members.
2. Adding a provision such that if the Governor declines to suspend the rule after the majority (currently two thirds) JARRC vote, the JARRC finding would be transmitted to the agency and would trigger automatically a petition to repeal the rule in question pursuant to RCW 34.05.330. Within sixty days, pursuant to RCW 34.05.330, the agency would have to commence rule repeal proceedings (or proceedings to amend appropriately the rule) or state why no such proceedings would be commenced. The legislation would specify that included in any statement declining to repeal the rule the agency must state why the rule is within the scope of its statutory authority.
3. Expanding JARRC authority to review rules for compliance with statutory procedures.
4. Allowing JARRC, by a two-thirds vote, to create a rebuttable presumption that a regulation was adopted without authority for purposes of any judicial proceeding in which the validity of the regulation is at issue.

Review Existing Rules

Purpose:

To create an ongoing mechanism for identifying, reviewing, and repealing or amending existing regulations that are obsolete, duplicative, conflicting, or otherwise unnecessary.

Nature of Problem:

There is a lack of knowledge about which regulations need revision; however, a requirement to review every rule would be onerous. The Task Force, the Legislature, and the Executive Branch must formulate an on-going rules review system and begin reviewing regulations now.

Although the existing APA in RCW 34.05.330 provides a mechanism by which any person can petition the rule-adopting agency to repeal its own rule, on a regular basis, there needs to be a broader effort to review existing rules and some mechanism to repeal a rule other than simply having the rule-adopting agency reevaluate its own rule.

Recommended Action:

1. Establish a Task Force subcommittee that will:
 - a. initiate the rules review process by identifying a priority list of rules for review in 1994, such identification to include a means by which the public can nominate rules for the subcommittee to consider;
 - b. formulate a realistic ongoing process for reviewing existing rules.
 - c. prepare a draft of the on-going rules review process quickly so that the Task Force can recommend it to the Governor in time to identify resource needs in the budget.
2. Recommend that the Legislature amend the APA to provide for a rules review by the Governor. The existing APA allows for any person to petition for agency review of rules. The amendment will provide any person who unsuccessfully seeks an agency repeal to petition the Governor for the repeal or readoption of such rule.

Comment:

Under this revised recommendation the subcommittee would proceed on two tracks. On one it would create a mechanism for on-going rules review, with the Task Force forwarding a recommendation to the Governor before the 1994 report deadline so that adequate resources for the process could be written into the next budget.

On the other track the subcommittee would prepare a priority list with which to begin the rules review process. The public could nominate rules for the subcommittee to prioritize. The questions of who would do the actual reviewing, and how it will be done will need to be specified. By getting the list out quickly, the first review might be done on a pilot basis, thus contributing lessons for refinement of the ongoing mechanism. One approach the subcommittee might consider, for example, could continue to involve the public in a kind of "negotiated de-regulation."

Performance Reporting

Purpose:

To improve the timeliness, consistency, and responsiveness of state agency administration of regulation by analyzing and reporting the results of regulatory reform initiatives.

Nature of the Problem:

A significant amount of regulatory reform activity is going on throughout state government. These efforts need to be compiled and evaluated to provide a broad understanding of successes and shortcomings.

There is also a need to measure results. Decision timeliness, number of regulatory actions, percentage of appealed agency decisions, and the appeal overturn rate are examples of regulatory activities that can and should be counted and compiled. Currently this is not being done.

The Governor identified the need to coordinate regulatory activities between agencies and levels of government to improve timeliness and reduce duplication and overlap. EO 93-06 requests state agencies to:

- Resolve interagency disputes through jointly developed procedures.
- Convene agency rule coordinating committees
- Implement negotiated rule making and pilot rule process
- Improve regulatory information and education by:
 - a. Notifying those persons impacted of anticipated rule making.
 - b. The Business Assistance Center helping agencies better inform the public about regulatory requirements.
 - c. Providing better training to rule writers and others responsible for the regulatory process.
 - d. Utilizing Dept. of Licensing's Business License Center for other regulatory communications and one stop activities.

Monitoring and performance reporting were not included in the Governor's order.

Recommended Action:

Propose that OFM report performance of state agencies regarding implementation of Executive Order 93-06 and other regulatory reform activities by:

1. Dedicate staff to monitor regulatory reform efforts and report the results. The office will work closely with agencies to determine baseline statistics (e.g. permit flow time, appeals rates, overturn rates) against which to measure how well reform efforts are accomplishing their objectives.
2. Publishing a periodic report outlining the results of implementing other reform initiatives. The staff will also serve as a regulatory ombudsman for the public, providing a hotline for access and incorporating what it learns into the periodic report.

Subcommittee to Consider Alternative Approaches

Purpose:

To consider alternatives to command and control to achieve compliance with improved public acceptance.

Nature of the Problem:

The current "command and control" approach to regulation attempts to direct behavior by setting standards and penalizing violators. Many believe there are additional tools to complement the traditional approaches.

Several localities have attempted to protect the environment through innovation. They have established programs that allow for mitigation set-asides and development rights transfers. Mitigation set-asides for example could allow a developer to replace a filled wetland by creating a new wetland of equal or greater value. An example of a transfer of development rights (TDR) would be to provide a developer the option of giving up rights to build in a rural area in exchange for rights to develop in a denser, urban location.

Recommended Action:

1. Establish a subcommittee of the Task Force to study market and performance incentives as alternatives to command and control approaches.
2. Environmental protection, workplace safety, and resource preservation are among the areas to be addressed. The study should include education and technical assistance programs, and economic incentives and disincentives such as reducing pollution permit fees for those who exceed pollution reduction standards. Administrative and Legislative recommendations are needed for implementation.
3. The subcommittee should explore the following alternative approaches: 1) market incentives such as wetlands mitigation or developments rights transfer programs, 2) integrated permits that cover multiple environmental rules such as air pollution and water quality permits, 3) pollution prevention programs, 4) increased technical assistance to those subject to regulations, and 5) public and consumer education.
4. The subcommittee should draw upon the experience and expertise available in the private sector and state agencies that are beginning to develop alternative approaches and coordinate with the private sector and Business Assistance Center.

Integration of GMA, SEPA, SMA and Others

Purpose:

To determine how to consolidate land use and environmental laws to reduce cost and complexity without harming the environment and to establish the long range context within which short-term actions can be taken.

Nature of the Problem:

Over the last 25 years, regulatory practices in the State of Washington have evolved to ever greater levels of complexity. We are now discovering that regulations sometimes conflict with each other and with other public policy objectives such as housing affordability and economic development. While in recent years we have become more sophisticated in planning and impact identification, we have not focused on or revised the process for implementation of the various regulations. The costs and unintended consequences of regulation result from two principal characteristics of the regulatory culture that have emerged. First, laws and regulations have been adopted at different times to address narrow, specific problems, without complete consideration for how they interact with other regulations. The result has often been overlap, duplication, conflict and confusion in regulation. Second, laws and regulations that have been adopted this way often fail to balance the narrow environmental objective of the regulation with broader public policy objectives. This conflict has become even more pronounced since GMA has directed the local governments to adopt comprehensive plans that integrate environmental, economic, and these other broader public policy objectives.

Recommended Action:

- A. During 1994 establish a Task Force subcommittee with additional members to:
 - 1. Study SEPA, the GMA, SMA, and all other land use and environmental laws related to construction and resource use to determine how all aspects of environmental protection, land use, appeals and litigation processes can be integrated.
 - 2. Review state, federal, and federally delegated permit programs, local land use laws, and the need for coordination in these processes to ensure strict time lines for permit decisions.
 - 3. Prepare recommended legislation for consideration by the legislature in 1995.
- B. Give appropriate notice to governments planning under the GMA that the results of this Task Force study guide and affect development regulations to be adopted under the GMA.
- C. In the short term, initiate the legislative and regulatory changes on the following pages which are recommended for action in 1994.

Comments:

Given the size and complexity of the project, state agency and legislative staff should provide support to the subcommittee. The Task Force subcommittee may need technical assistance. Liaisons with the SEPA/GMA working group (of DCD & DOE), the City/County Planning Directors, and others also should be maintained.

Uniform Requirements for Development Regulations

Purpose:

Establish uniform requirements for cities and counties adopting development regulations under the GMA.

Nature of the Problem:

The GMA requires local governments to adopt development regulations to implement their GMA comprehensive plans. These regulations must be adopted by the end of 1994 and have the potential to add additional layers of regulations and create inconsistency between local governments. A number of issues need to be addressed in this legislative session to provide guidance to cities and counties before they adopt their plans and regulations and to reduce conflict, duplication, and overlapping processes.

Recommended Action:

Recommend to the Legislature amendments to the GMA and other pertinent statutes to:

1. Require local governments to include in their development regulations a timely and predictable permit process for complete applications deemed to be consistent with adopted GMA plans and regulations.
2. Require local governments to specify the contents of a complete application in their development regulations adopted to implement their GMA plans.
3. Require all local governments to provide written notice to applicants, within 10 days following the filing of a permit application, of the following:
 - a. if the application is complete, or
 - b. if the application is incomplete, then what is necessary to make it complete.

Comments:

The Task Force was in agreement on the goal to integrate SEPA review with the land use permit process and to develop a single, project level review process, but there was no consensus yet on exactly how to achieve that goal or on the timing of when it should occur. Some members felt that we were ready now to propose that compliance with the critical areas ordinances and other development regulations to be adopted under the GMA would constitute adequate SEPA mitigation for projects. Other members felt that acting now would be premature because the GMA does not include minimum standards for the critical areas ordinances or development regulations and because local governments will not be adopting their development regulations until late 1994. The Task Force subcommittee formed to study the integration of SEPA, GMA, SMA, and other land use and environmental laws will consider this issue during its ongoing work next year.

To help clarify the issues the Task Force provides the following discussion of pros and cons to an action that was considered by the Task Force but not recommended at this time.

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Proposal Discussed:

Require that where adopted regulations address environmental impacts (e.g., critical area ordinances, drainage regulations, impact fees), then such regulations would be presumed to provide adequate mitigation under SEPA, absent extraordinary circumstances.

The Task Force reached complete consensus that SEPA and GMA should not provide "multiple bites of the apple." There was a debate over the specific proposal:

PRO: [Tom Goeltz]

1. Seattle Example. This development regulation/SEPA integration currently is operating and effective in Seattle, i.e. regulations are presumed adequate mitigation under SEPA.
2. Avoid Duplication. Each jurisdiction must adopt critical area ordinances under the GMA. Further, most jurisdictions have drainage ordinances, grading ordinances and numerous other environmental regulations, separate from SEPA. Since these address particular elements of the environment, the regulations should be presumed adequate mitigation under SEPA absent extraordinary circumstances. Otherwise, there are at least "two bites of the apple."
3. Local Autonomy Preserved. Local governments would choose the substance of their ordinances, and having done so would constitute the regulation of that particular environmental impact.
4. Eliminate Delays. By continuing to subject projects to SEPA appeals when they otherwise must meet the adopted environmental regulations, projects are substantially delayed.

CON: [Rod Brown]

1. Not duplicative. Although some jurisdictions like Seattle may have adopted comprehensive development regulations that take some, but not all, environmental impacts into consideration, most other jurisdictions do not have development regulations that would provide the type of mitigation that would be imposed pursuant to SEPA. Furthermore, many of these jurisdictions lack the expertise (and in some cases, the intent) to do so in the future. In addition, there are some local jurisdictions that have not met the GMA deadlines for adopting critical areas ordinances.
2. No Minimum Standards. Because the GMA does not specify minimum standards for critical areas ordinances or the other development regulations of local government, there is no assurance that these local ordinances will provide for adequate mitigation of the environmental impacts of specific projects or that local autonomy will not result in inadequate development regulations. We should wait until later in 1994 to evaluate the adequacy of the plans and development regulations.
3. Lack Experience. No GMA comprehensive plans have yet been adopted establishing the framework for development regulations. It is, therefore, premature to significantly change the authority under SEPA to assure adequate environmental consideration and protection. The proposal may be a good idea for the 1995 Legislature, but it is too early to do it now.

GMA Appeals Process

Purpose:

Amend the GMA to simplify the appeals process for review of GMA interim growth areas plans and development regulations.

Nature of the Problem:

The jurisdiction of the Growth Management Hearings Boards is limited only to compliance with the GMA and with SEPA, as it relates to the adoption of GMA interim growth areas, plans and development regulations. The Boards do not hear any claims related to constitutional issues or procedural compliance with local or other state laws, including procedural compliance with a local jurisdiction's SEPA ordinance. Furthermore, the authority to plan under the GMA is not exclusive, and cities and counties continue to adopt land use and environmental regulations pursuant to SEPA, RCW ch 36.70, their police powers, charters, etc. As a result, appeals of GMA interim growth areas as well as the comprehensive land use plans and development regulations must be filed not only with the Growth Management Hearings Board, but also simultaneously in superior court to ensure that issues regarding compliance with the GMA and SEPA and constitutional and procedural challenges, can all be heard. In addition, local or agency SEPA appeals processes have shorter appeal periods than the 60-day GMA appeal period and may require that SEPA appeals be filed both with the Boards and in superior court in advance of the GMA appeal. Finally, any appeals of the Board's actions then must be filed in Thurston County Superior Court which has exclusive jurisdiction to hear those appeals.

Recommended Action:

Recommend to the Legislature:

1. An amendment to RCW 36.70A.290 to clarify that the 60-day appeal period also applies to petitions to the Boards alleging that a state agency, county or city is not in compliance with SEPA as it relates to the GMA plans and regulations.
2. An amendment to RCW 36.70A.300 and the APA to remove Thurston County Superior Court from the appeals process and provide for direct appeals of the Board's actions to the Court of Appeals where they can be consolidated with appeals from the parallel cases which must be filed in local superior courts.
3. An amendment to GMA to authorize the GMA Hearing Boards to appoint hearing examiners and to allow the hearing examiners to make final decisions on behalf of the Boards.

Comments:

Task Force members agree with the goals to shorten the appellate process and eliminate the need to file multiple, simultaneous appeals to different hearing bodies and courts. However, none of the specific proposals that were considered would have fully accomplished the goals. The Task Force subcommittee formed to study the integration of SEPA, GMA, and other land use and environmental laws will give this issue high priority early in 1994 so that a more comprehensive recommendation can be made to the Legislature.

SEPA Appeals

Purpose:

Provide for a single SEPA appeal hearing on procedural issues.

Nature of the Problem:

SEPA allows, but does not require, local governments to establish a procedure for administrative appeals on procedural issues. RCW 43.21C.075 permits only one agency appeal on procedural issues. This has not been interpreted to restrict local governments from permitting multiple hearings (e.g., before both a hearing examiner and city council) on procedural issues such as declarations of non significance or adequacy of any EIS.

Recommended Action:

Recommend to the Legislature amendments to RCW 43.21C.075 as follows for jurisdictions that provide for SEPA appeals on procedural issues:

1. To require that SEPA appeal hearings on procedural issues be conducted by a hearing examiner (unless the jurisdiction does not have a hearing examiner) who shall make a final decision; and
2. To require that any further SEPA appeal on procedural issues shall be to Superior Court.

Comments:

Some local governments do not provide for any procedural or substantive SEPA appeals and they will be able to continue not to do so. In addition, many local governments that provide for SEPA appeals do not have hearing examiners. This amendment to SEPA will allow those local governments without hearing examiners to continue to permit SEPA appeals to be heard by their planning commissions, city councils, or county councils or commissioners. This amendment will not affect the provisions of RCW 43.21C.060 that require local SEPA appeals on substantive issues (mitigation or denial) to be heard by the local legislative authority, "unless that legislative authority formally eliminates such appeals".

Model Toxics Control Act

Purpose:

Exempt remedial actions conducted under DOE approval pursuant to the Model Toxics Control Act (RCW ch.70.105D) from the procedural requirements of state and local environmental and land use laws.

Nature of the Problem:

Prior to the adoption of the Model Toxics Control Act by Initiative 97 in 1989, RCW 70.105B.250 provided the following exemption from the procedural and substantive requirements of state and local laws that would otherwise apply to remedial action conducted under approved settlement agreements:

A person conducting remedial action under an approved settlement agreement or the department conducting remedial action is exempt from the procedural and substantive requirements of state and local laws that would otherwise apply to the remedial action, including those requirements imposed by chapters 70.94, 70.105, 90.03, 90.44, and 90.58 RCW.

In addition, the Shoreline Management Act, SEPA, and other applicable state statutes included similar exemptions. These exemptions were repealed by Initiative 97 and since then all remedial actions, including those pursuant to settlement agreements and agreed orders have been subject to the provisions of the State Environmental Policy Act and have been required to obtain various in state and local permits. This could result in substantial delay in the cleanup process as well as additional costs. Such additional permit reviews and costs do not seem warranted when the remedial action is being conducted under an approved settlement agreement or agreed order pursuant to WAC 173-340, especially because the remedial action is designed to enhance the environment.

Recommended Action:

1. Recommend to the Legislature an amendment to the Model Toxics Control Act to add language similar to that formerly found in RCW 70.105B.250, which was repealed by Initiative 97. The amendment should exempt remedial actions only from the procedural, not the substantive, provisions of state and local environmental and land use laws. This amendment should be broad enough to exempt all DOE-supervised cleanups now authorized by the Model Toxics Control Act.
2. Amendments also may be required to Chapters 43.21C, 70.94, 70.105, 90.03, 90.44, 90.48, 90.58 and 90.62 RCW, to provide exemptions from the procedural requirements of these laws.

SEPA/GMA Integration

Purpose:

Integrate the SEPA and GMA processes to ensure deference to GMA plans and regulations.

Nature of the Problem:

The Growth Management Act has redirected our focus away from the analysis of impacts on specific projects on a case-by-case basis and towards the adoption of comprehensive land use plans and development regulations to address these impacts. In addition, compliance with SEPA at the time of adoption of the GMA plans and regulations should identify major environmental impacts of anticipated land uses and result in the development of regulations designed to mitigate those impacts (for example, critical areas ordinances, drainage codes, and impact fees). Once the new plans and development regulations have been adopted, requiring additional environmental review for projects that comply with these regulations could result in costly and time consuming duplication of efforts by local governments and applicants.

Recommended Action:

1. Direct the Department of Ecology and the Department of Community Development to adopt uniform regulations pursuant to RCW 43.21C.110 and RCW 36.70A.190 to provide a model for programmatic EIS's which will satisfy the GMA requirements for SEPA compliance to ensure that the SEPA review is adequate to support the adoption of the plans and regulations.
2. Develop one or more local government pilot projects to demonstrate the integration of environmental factors into the adoption of the GMA plans and development regulations so that once the development regulations are adopted they can provide the new regulatory framework for the review of projects and the issuance of permits, thereby enabling local governments to raise threshold levels or exempt projects from additional SEPA review.
3. Provide funds, within existing revenues, to expand the technical assistance provided by DCD to counties, cities, and towns to meet the requirements of the GMA. The assistance would primarily be for smaller communities which lack adequate staff or the resources to hire additional staff to meet these requirements.
4. Provide funds, within existing revenues, as seed money to establish a program of circuit riding staff (to be provided by larger counties and cities by contract under the Interlocal Cooperation Act) to permit smaller communities to meet their responsibilities under the GMA. The circuit riding staff could include both planning staff and hearing examiners.

Comment:

During 1994 the Task Force subcommittee formed to study the integration of SEPA, GMA, SMA and other land use and environmental laws will evaluate how best to achieve the goal of integrating the environmental review process into the development permit process so that we can avoid "taking two bites of the apple." Note the discussion on page 16 for pros & cons on similar issues.



STATE OF WASHINGTON

OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (206) 753-6780

EXECUTIVE ORDER

EO 93-06

IMPROVING STATE REGULATORY ACTIVITIES

I, Mike Lowry, Governor of the State of Washington, by virtue of the power vested in me, declare my commitment to improve Washington's regulatory climate. It is, therefore, the purpose of this executive order to accomplish the following:

- To institute immediate management improvements in state regulatory functions reducing inefficiencies, conflicts, and delays.
- To develop long-term solutions to complex regulatory issues that, if left unresolved, could impede the orderly growth and sustained economic development of the state.
- To ensure that any regulatory reform solutions designed to support economic benefits also ensure continued protection of the environment, the health, and the safety of our citizens.

To accomplish these purposes, I hereby direct the following actions:

- I. **Creation of the Governor's Task Force on Regulatory Reform**
There is created the Governor's Task Force on Regulatory Reform to consist of no more than 23 members. Membership shall reflect the interests of business, agriculture, labor, the environment, other citizens, the Legislature, cities and counties, and state agencies. Representatives from state agencies will serve as nonvoting, ex officio members. Members shall be appointed by the Governor and the Governor shall select the chair. Staffing for the Task Force shall be provided by the Office of Financial Management with assistance from state agencies and the Legislature, as may be made available. State agencies shall provide the Task Force with information and assistance as needed.

The charge of the Task Force is to develop recommendations for statutory and administrative changes that lead to more reasonable, efficient, cost-effective, and coordinated regulatory actions. The recommendations shall support economic benefits for the state while ensuring continued protection of the environment and the health and safety of citizens.

The Task Force shall commence operations upon appointment in August 1993 and terminate on December 31, 1994. The Task Force shall submit interim recommendations to the Governor by December 1, 1993, and final recommendations by December 1, 1994.

Executive Order 93-06

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The Task Force shall develop recommendations to respond to the following issues:

- A. How should the state's environmental and growth management requirements and processes be integrated so that the goals of environmental protection, orderly and planned growth, and sustained economic development are achieved?
- B. What improvements should be made in project approval, permitting, and appeal processes and structures to make them faster and simpler without undercutting environmental protection?
- C. In addition to actions directed by this executive order, what other mechanisms, structures, and procedures should be instituted to achieve better coordination and consistency in regulatory actions within agencies, between agencies, and between jurisdictions?
- D. Are there effective performance-based, market-based, and other regulatory models that will achieve more efficient and effective regulation than current command and control and technology-based regulatory approaches?
- E. In addition to actions directed by this executive order, are there other ways to expand the use of alternative decision making and dispute resolution models designed to reach consensus and resolve conflict on regulatory issues without resorting to litigation?
- F. Is there a need to amend the state's Administrative Procedure Act or related statutes that would lead to more reasonable, efficient, timely, cost-effective, and coordinated rule-making and adjudication?

II. Expedited Resolution of Interagency Disputes

In partial fulfillment of the intent of Chapter 279, Laws of 1993 (Substitute Senate Bill 5634), any agency that has regulatory responsibilities over areas in common with, or related to, the duties of other agencies is hereby requested to develop jointly with those other agencies procedures for the resolution of interagency disputes regarding regulatory matters. The purpose of these procedures is to avoid litigation and time-consuming delays in regulatory actions by providing commonly understood procedures to expedite the resolution of disputes between agencies. The procedures may include, but are not limited to, the delineation of stages of dispute resolution designed to elevate issues to higher administrative levels within agencies so that the issues may be resolved in a timely manner. Such processes shall be established through the use of memorandums of understanding between agencies, or by other appropriate means. The Office of Financial Management shall monitor and assist in developing model interagency dispute resolution processes for use by agencies. The Office of Financial Management shall cooperate with the Attorney General's Office in the development of these processes.

III. Agency Rule Coordinating Committees

Any agency that anticipates the adoption of rules affecting regulatory programs in other agencies or jurisdictions is hereby requested to convene a temporary agency rule coordinating committee (ARCC), consisting of representatives from those affected agencies or jurisdictions. An ARCC shall be created by the agency originating the rule in the early stages of rule development to ensure that substantial coordination of regulatory programs is achieved. The purpose of an ARCC is to identify and resolve, to the extent practicable, any potential conflicts, jurisdictional overlaps, or duplication of effort before formal rule adoption occurs.

- IV. Implementing and Promoting Negotiated Rule Making and the Pilot Rule Process
- To assist in the implementation of Chapter 202, Laws of 1993 (Substitute Senate Bill 5088), the Office of Financial Management shall develop, in cooperation with the Attorney General's Office and other agencies, model policies, procedures, and other information to promote the use by agencies of negotiated rule making and the pilot rule process. Negotiated rule making includes procedures and methods for reaching agreement among interested parties, when possible, on proposed rules before publication of notice and hearings. The pilot rule process is designed to reduce unreasonable economic, procedural, and technical burdens on the regulated community by measuring or testing, in advance, the feasibility of compliance. It includes the use of voluntary pilot study groups.

The purpose of these processes is to involve the regulated community and other affected groups and individuals at the early stages of rule development, thereby improving compliance and acceptance of the rule and reducing the potential for litigation. Agencies are encouraged to review future rule making and identify those instances where negotiated rule making and the pilot rule process may be appropriate.

- V. Improving Regulatory Information and Education
- It is the goal of state government to improve public information about current and future regulatory actions and better educate agency personnel about managing regulatory activities. To achieve this goal, agencies are hereby requested to comply with the following:
- A. To the extent possible, no later than December of each year, identify and prepare a list of major subjects of potential rule making anticipated for the ensuing calendar year. The list shall be made available, upon request, to affected members of the regulated community and other groups and individuals, including other agencies and jurisdictions. Early identification of potential rule making will facilitate interagency rule coordination and early involvement of interested parties in rule making. Failure to identify a subject of rule making on the list in no way limits or affects an agency's authority to adopt rules on that subject.
 - B. Inventory existing publications or other communication materials used to disseminate regulatory information to the public and submit copies of those materials to the state's Business Assistance Center. Using this information, the Business Assistance Center, working with agencies, shall develop proposals for consistent and coordinated approaches for agencies to better inform the public about regulatory requirements.
 - C. Participate, as appropriate, in the regulatory fairness training program being developed by the state's Business Assistance Center. The purpose of the training is to further educate agency regulatory personnel about business costs and concerns, help agencies achieve competency in statutory rule making requirements, share innovative and effective ways to involve and inform the public about rule making and mitigate regulatory impacts, improve the quality of rule writing, and facilitate the establishment of agency rule coordinating committees.

Executive Order 93-06
Page 4

- D. Utilize the services of the Department of Licensing's Business License Center in developing cost-effective delivery of information and one-stop master licensing for agency permits, licenses, certificates, or approvals to perform business activities.



IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the State of Washington to be affixed at Olympia this 17th day of August A.D., nineteen hundred and ninety-three.

Mike Low
Governor of Washington

BY THE GOVERNOR:

[Signature]

Secretary of State

1. What's going on in society that causes these issues to be before us now?

- | | |
|---|--|
| <ul style="list-style-type: none"> • Job and economic insecurity • Government seen as obstructionist <ul style="list-style-type: none"> - time and cost of compliance • New laws passed before old ones are implemented • Conflicting regulations <ul style="list-style-type: none"> - can't administer • Conflicting interpretations <ul style="list-style-type: none"> - by the regulators to the regulated • Overlapping accountability • Sheer volume of regulations • Volume implies arbitrary enforcement • Rapid pace of change <ul style="list-style-type: none"> - informational society - old government structures • Risk averse nature of managers <ul style="list-style-type: none"> - innovation averse • Too many lawyers • More intrusive personal regulations <ul style="list-style-type: none"> - i.e., wood stoves, auto emissions, helmets • Too many causes • Bureaucracy has operational mentality <ul style="list-style-type: none"> - procedures rule • Concentration on stick <ul style="list-style-type: none"> - no education & voluntary compliance - by many different agencies | <ul style="list-style-type: none"> • Fashionable to worry about policy/less emphasis on making it work • Second guessing legislature • Lack of legislative intent <ul style="list-style-type: none"> - administrators decide - not enough detail in law • Conflicting role for administrator <ul style="list-style-type: none"> - regulator versus partner • No reward for efficiency • Aggregation of roles that administrators have to play • Public input required but not used <ul style="list-style-type: none"> - required to be used • Have not consistently delineated goals before writing regulations • Businesses spending more time & money on regs than business • At crossroads. After 20 years of adding regulations there is a shift of values. • No evidence of getting results • Valuable time is lost getting perfect solution • No yardsticks • No quantification of the cost of results. Costs don't equal results |
|---|--|

2. What are characteristics of "good" regulation

- | | |
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| <ul style="list-style-type: none"> • Regs that are needed <ul style="list-style-type: none"> - not those that are obsolete - sunset review process • Regs tied to specific goals <ul style="list-style-type: none"> - way to measure - clear legislative intent - clear delegation • Dependability of regulations (for capital investment & certainty) • Regulations that further legislative goals in most unobtrusive & cost effective way • Clear communication • Performance based - defined measures • Reviews which are time limited <ul style="list-style-type: none"> - all venues • Need some plan to mitigate the negative effects on regulated • Fewer steps in appellate process | <ul style="list-style-type: none"> • Lead agency <ul style="list-style-type: none"> - vertical - not overlapping - horizontal • Product of process where stakeholders are involved • Well managed • Good horizontal partnering • Focus on good decisions (with information available at time) not just results <ul style="list-style-type: none"> - so many people have "bites at apple" • Consistency across agencies • Result in yes or no: timely, practical, consistent • Supportive & creative legal assistance • Where costs are understood <ul style="list-style-type: none"> - of admin - of result |
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3. What measures will indicate performance?

- | | |
|--|---|
| <ul style="list-style-type: none">• Is compliance incentive driven, not directive?<ul style="list-style-type: none">- fewer enforcement actions• Fewer reportable accidents• Regulators anonymous - "new values"• Economic statistics• Fewer complaints• Process that people approve• Pages of regulations before and after the Task Force recommendations• Steps clear between goals and regulations | <ul style="list-style-type: none">• Reworking APA• Timeliness measured• Better cost measurement - know the costs• Measure how people feel about regulation<ul style="list-style-type: none">- basis in research• Caution here on level of perfection• Before & after<ul style="list-style-type: none">- description of what exists now compared to what exists later• Is there a checklist of "good" practices? |
|--|---|

4. What is the problem the Task Force should address?

- | | |
|---|---|
| <ul style="list-style-type: none">• Where the violation of regs result in penalty<ul style="list-style-type: none">- broader than land use- define process• Promulgation, missed results, enforcement, what is wrong that needs to be addressed.• For this session, change the rule making process to keep things from getting worse. Then address needed changes to existing regulations over the next year.• Decide which few things to fix now | <ul style="list-style-type: none">• Decide how to improve coordination now, and SEPA/GMA over long term• How to harness a lot of thought about Task Force proposed moves• If little short run action, then compounding problem• How to decide which pieces to address first• Losing the momentum of the political process• Getting input from various groups of constituencies<ul style="list-style-type: none">- specifically labor/environment |
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ATTACHMENT C

Groups & Individuals having provided written information to the Regulatory Reform Task Force

American Planning Association	Washington Association of Realtors
Andre Gay	Washington Council for Public Personnel Administration
Association of Washington Business	Washington Institute
Association of Washington Cities	Washington Public Parks Association
Attorney General	Washington State Association of Counties
Bainbridge Cedar Products	Washington State Labor Council
Business Assistance Center	Western Petroleum Marketers Association
City of Renton	Weyerhaeuser
City/County Planners Association	
Department of Ecology	
Dept. of Community Development	
Dept. of Employment Security	
Dept. of Health	
Dept. of Labor and Industries	
Drinking Water 2000 Task Force	
Elaine Davis	
Enviro-Drain Inc.	
Forward Washington	
Friends of Washington	
Greater Seattle Chamber of Commerce	
Griffin Development Company	
Independent Business Association	
John Woodring	
King County Housing Partnership (Benson Glen)	
League of Women Voters	
Lewis & Lewis Consulting	
National Audubon	
National Federation of Independent Business	
Penberthy Electromelt International, Inc.	
People for Puget Sound	
Representative Applewick	
Rod Brown	
Senate Labor & Commerce Committee Staff	
Senator Jim Jesernig	
Senator Ray Moore	
SEPA/GMA Working Group	
Sierra Club	
Small Business Improvement Council	
Taylor Washburn	
Tom Goeltz	

Regulatory Reform
Some of the Alternatives

1. **SEPA/GMA/Related Statutes**

- A. Legislatively integrate SEPA and GMA processes
- B. Legislative recommendations for procedural requirements in adopting development regulations under GMA.
- C. Governor/Legislature clarify the mechanism for state review of GMA plans.
- D. Revise SEPA
- E. Coordination of state and local watershed planning.
- F. State should coordinate facility planning through regionwide master planning.

2. **Rulemaking Procedures and Communication**

- A. Communications:
- B. Criteria for state agency rules:
- C. Revise, update, repeal old rules
- D. Central repository-"clearinghouse" for all rules
- E. Better information and distribution of rules
- F. Department of Information Services/Central Information Repository
- G. Negotiated rule making

3. **Challenges to Rules**

- A. Pay litigation costs of prevailing party when rules are challenged.

4. **Regulatory Fairness Act Changes & Implementation**

- A. Regulatory impact statements
- B. Develop a method to establish a regulatory cost index for small business.

- C. Cumulative regulatory impact analysis required for each new rule.

5. JARRC

- A. JARRC

6. Procedures/Requirements for the Legislature

- A. Clear and concise Legislative intent
- B. Eliminate broad grants of rulemaking authority.

7. One Stop Concepts

- A. One stop concepts

8. Federal/State Relationships

- A. Dangerous Waste rules (WAC 173.303) duplicate federal regulations and could be substantially reduced.
- B. Legislation that state rules not be more stringent than federal unless there is a clear health and safety justification.

9. Alternative Strategies

- A. Market incentives to achieve the goals instead of command and control
- B. Assistance to private sector for compliance
- C. Compensate property owners damaged by regulations.
- D. Performance based alternatives to prescriptive building codes.

10. Timelines and Duplication

- A. State and local government permit processes
- B. Coordination of regulatory activities
- C. Eliminate duplication between levels of government

Appendix B

- 1. Side by Side**
- 2. Governor Lowry's Veto Message**

COMPARISON OF TASK FORCE REPORT WITH 1994 BILLS AND EO 94-07

	HB 2510 (Task Force Proposal)	E2SHB 2510 (As Passed Legislature)	ESSB 6339 (As Passed Legislature)	Executive Order
Review Existing Statutes Granting Rule Making Authority	Legislative committees review all statutes with intent sections and grants of rule-making authority using specified criteria. If criteria not met, committees prepare corrective legislation. Criteria: <ul style="list-style-type: none"> Continued need Clear legislative intent and grants of rule-making authority Specific, measurable outcomes Voluntary compliance Consistency with other statutes 	No provision	Not applicable	Not applicable
New Legislation	Bills granting rule-making authority should contain clear, comprehensive intent statements and specific directions to agencies.	No provision	Not applicable	OFM shall review 1995 agency request legislation to assure that grants of rule making authority are clear.
Regulatory Notes	Legislative committees shall prepare regulatory note on each bill granting rule-making authority approved by the committee and include a checklist. The checklist includes: <ul style="list-style-type: none"> Does the bill respond to a specific identifiable need and is government most appropriate institution to address the need Does the bill contain a clear statement of legislative intent Does the bill contain measurable outcomes and an evaluation process Has there been adequate involvement of affected interests Have the costs of compliance been estimated and was the least cost method considered Does the bill adequately address voluntary compliance Does the bill adequately resolve conflicts with other laws 	No provision	Not applicable	OFM shall revise fiscal note on a bill to include information concerning: <ul style="list-style-type: none"> Whether the bill requires new rules or amendments to existing rules The cost involved in developing any rules The types of entities that may be affected by the bill Other agencies with authority over the same subject matter

APPENDIX B

COMPARISON OF TASK FORCE REPORT WITH 1994 BILLS AND EO 94-07

COMPARISON OF TASK FORCE REPORT WITH 1994 BILLS AND EO 94-07				
	HB 2510 (Task Force Proposal)	E2SHB 2510 (As Passed Legislature)	ESSB 6339 (As Passed Legislature)	Executive Order
Rule Adoption Criteria	<p>Agency must consider before adopting any rule:</p> <ul style="list-style-type: none">• Statutory authority• Need• Economic and environmental consequences of adopting or not adopting• Consistency with other statutes and agency rules• Alternatives that may achieve same purpose• Reasons for differences between rule and federal rules on same subject• Reasons for differences of applicability between public and private entities <p>Adequacy or accuracy of consideration not subject to judicial review, failure to comply with requirement to prepare is.</p>	<p>An agency may adopt a rule only if it determines that:</p> <ul style="list-style-type: none">• The rule is needed• The likely benefits justify likely costs• There are no reasonable alternatives presented during public comment that would be as effective and less burdensome on those required to comply• Any fee will generate no more revenue than is necessary to achieve the objectives of the statute authorizing the fee• The rule does not conflict with any provision of federal law• Any overlap or duplication with any federal or state law is necessary to achieve the objectives of the statute on which the rule is based• Any difference with any federal law on same subject is necessary to achieve the objectives of the statute on which the rule is based or is expressly authorized by statute• Any difference of applicability between public and private entities is necessary to achieve the objectives of the statute on which the rule is based or is expressly authorized <p>Applies only to rules which:</p> <ul style="list-style-type: none">• May result in a penalty or administrative sanction if violated• Establish, alter, or revoke a qualification or standard for the issuance, suspension, or revocation of a license to pursue a commercial activity, trade, or profession• Establish, alter, or revoke a mandatory standard for a product or material that must be met before distribution or sale <p>*(Section Vetoed)*</p>		<p>Agency shall consider before adopting any rule:</p> <ul style="list-style-type: none">• Objective of the rule• Whether changes in other rules or statutes would achieve same objective• Anticipated economic and environmental consequences of adopting or not adopting• How the rule will be coordinated with other rules of the agency and with other agencies <p>Agency shall assess alternative forms of regulation and specify performance standards in appropriate circumstances.</p> <p>If a rule is proposed in order to comply with a federal law or if the rule provides for difference applicability between public and private entities, the agency shall provide a written explanation for the differences, evaluating their consequences, and providing a rationale for adopting the rule.</p>

COMPARISON OF TASK FORCE REPORT WITH 1994 BILLS AND EO 94-07

	HB 2510 (Task Force Proposal)	E2SHB 2510 (As Passed Legislature)	ESSB 6339 (As Passed Legislature)	Executive Order
Summary of Received Comments	Agency must include in concise explanatory statement a summary of its responses to comments at time it adopts a rule and provide a copy of concise statement to any person who requests or who commented on rule.	Before adopting a final rule, an agency must prepare a written summary of comments received, a substantive response to comments by category or subject matter, and an indication of how the rule reflects comments. <ul style="list-style-type: none"> • Include the written summary of agency's substantive responses to comments or categories of comments. • Include citations to data, factual information, studies, and reports relied on in the adoption of the rule and where they may be obtained 	Not applicable	Not applicable
Rule making file	Add requirement that file include written description of agency's consideration of rule-making criteria	<ul style="list-style-type: none"> • Include the written summary of agency's substantive responses to comments or categories of comments. • Include citations to data, factual information, studies, and reports relied on in the adoption of the rule and where they may be obtained 	Not applicable	Not applicable
Emergency Rules	Governor and Attorney General shall assure compliance with statutory requirements.	Governor and Attorney General shall assure compliance with statutory requirements. Agency must comply with rule adoption criteria or provide written justification for not doing so.	Not applicable	No provision

COMPARISON OF TASK FORCE REPORT WITH 1994 BILLS AND EO 94-07

LEGISLATION WITH 1994 BILLS AND EO 94-07				
Petition to Adopt, Amend, or Repeal an Existing Rule	HB 2510 (Task Force Proposal)	E2SHB 2510 (As Passed Legislature)	ESSB 6339 (As Passed Legislature)	Executive Order
	If agency denies a petition, person may appeal to Governor within 30 days. Within 60 days, Governor shall either reject the appeal or direct the agency to initiate rule-making.	<p>If a cabinet level agency denies a petition to repeal or amend a rule, the person may file an appeal to the Governor within 30 days.</p> <p>Petition must include discussion of:</p> <ul style="list-style-type: none">• Whether the agency has complied with rule adoption criteria.• Whether the agency has an internal rules review process.• Whether the rule conflicts with, overlaps, or duplicates any provision of federal, state, or local law and whether the agency has taken steps to mitigate adverse effects of the conflict, overlap, or duplication.• The extent to which technology, social, and economic conditions and other relevant factors have changed since the rule was adopted.• Whether the statute the rule implements has been amended or repealed by the legislature or ruled invalid by a court. <p>The Governor must act on the appeal within 60 days. The Governor may order an agency to initiate rule-making proceedings or may reject the appeal.</p> <p>*(Section Vetoed)*</p>	Not applicable	No provision

COMPARISON OF TASK FORCE REPORT WITH 1994 BILLS AND EO 94-07

	HB 2510 (Task Force Proposal)	E2SHB 2510 (As Passed Legislature)	ESSB 6339 (As Passed Legislature)	Executive Order
Joint Administrative Rules Review Committee (JARRC)	<ul style="list-style-type: none"> JARRC may recommend to Governor suspension of a rule on a majority vote. If Governor disapproves, agency shall treat recommendation as a petition to amend the rule and commence rule-making proceedings within 60 days or state why rule was within agency's statutory authority. Recommendation to suspend a rule creates a rebuttable presumption in judicial proceedings that rule is outside of legislative authority. 	<ul style="list-style-type: none"> JARRC may review challenge of rule based on claim that agency has not complied with rule adoption criteria or small business impact statement standards. JARRC may recommend suspension of a rule on a majority vote. If Governor disapproves, agency shall treat recommendation as a petition to repeal the rule and commence rule-making proceedings within 60 days or state why rule was within agency's statutory authority. Recommendation by a two-thirds vote to suspend a rule creates a rebuttable presumption in judicial proceedings that rule is outside of legislative authority. 	Not applicable	No provision

COMPARISON OF TASK FORCE REPORT WITH 1994 BILLS AND EO 94-07

Small Business Impacts	HB 2510 (Task Force Proposal)	E2SHB 2510 (As Passed Legislature)	ESSB 6339 (As Passed Legislature)	Executive Order
	<ul style="list-style-type: none"> • Use four digit SIC code, unless it would violate proprietary concerns • Agency shall reduce impact of rule by considering mitigation techniques not specified in statute • Prepare small business impact statement prior to filing notice of proposed rule • Agency required to prepare a statement for all rules unless adopted to comply with federal law • Statement shall use existing and new data to analyze cost • Mitigation alternatives must be included along with an explanation for not selecting them • Agencies are encouraged to use committees to review costs on small business prior to proposing a rule 	<ul style="list-style-type: none"> • Use four digit SIC code, unless it would violate proprietary concerns • Prepare statement if it will result in more than minor costs or if requested by JARRC. • Agency shall reduce impact of rule by reducing or modifying fine schedules for non-compliance and by considering mitigation techniques not specified in statute • Agency must consider lost sales or revenue, to extent information is provided. • Statement must include: <ul style="list-style-type: none"> • Steps taken to reduce cost of rule on small business or reasonable justification for not doing so. • How small business will be involved in development of rule. • List of industries which will be required to comply with the rule. • Agencies may survey a representative sample of businesses or appoint a committee to assist in determining costs of a rule. 	Not applicable	No provision

COMPARISON OF TASK FORCE REPORT WITH 1994 BILLS AND EO 94-07

	HB 2510 (Task Force Proposal)	E2SHB 2510 (As Passed Legislature)	ESSB 6339 (As Passed Legislature)	Executive Order
<p>Voluntary compliance and technical assistance</p>	<p>Governor shall require state agencies to designate technical assistance officers to coordinate voluntary compliance.</p> <ul style="list-style-type: none"> • Visits are not to be considered inspections or investigations • Voluntary compliance officer may not cite for violations, but shall report to agency • If business does not correct deficiencies within reasonable time, agency may reinspect and issue citation • State and agency not liable for damages that arise from providing technical assistance 	<ul style="list-style-type: none"> • Applies to Departments of Revenue, Employment Security, Ecology, Labor and Industries, Health, Licensing, and Fish and Wildlife. Does not include Fish and Wildlife rules dealing with seasons, catch or bag limits, gear types, or geographical areas for fishing or shellfish removal • A business entity which has written to an agency requesting technical assistance with specific types of rules or statutes may not be penalized for a violation of a rule unless the business: <ul style="list-style-type: none"> • Previously violated the statute or rule • Knowingly violated the statute or rule • Agency must issue a notice of deficiency stating the rule violated, steps necessary to comply, agency personnel who may provide assistance, and a reasonable date for compliance. • If business does not comply by date specified, penalty may be imposed. • Does not apply to violations: <ul style="list-style-type: none"> • Which place a person in danger of death or bodily harm • Cause or are likely to cause more than minor environmental harm • Cause or are likely to cause damage to property of others greater than \$1,000 • Failure to pay taxes, if difference between amount paid and amount owed is greater than \$1,000. • Agency not required to comply if compliance with provisions would lead to loss of federal delegation. Agency must request exemption from federal government. 	<p align="center">Not applicable</p>	<p>State agencies are required to promote voluntary compliance through technical assistance.</p> <p>During a technical assistance visit an agency:</p> <ul style="list-style-type: none"> • Shall inform the owner or operator of the facility of any violations and provide technical assistance concerning compliance • Shall not issue any fine or penalty until a reasonable period of time has elapsed to allow the owner or operator to correct the violations <p>An agency may reinspect within a reasonable period of time.</p> <p>Enforcement action may be taken for a violation which:</p> <ul style="list-style-type: none"> • Places a person in danger of death or bodily harm • Is causing or is likely to cause more than minor environmental damage • Is causing or is likely to cause physical damage to property in excess of \$1,000 • Has been the subject of a previous enforcement action

COMPARISON OF TASK FORCE REPORT WITH 1994 BILLS AND EO 94-07

	HB 2510 (Task Force Proposal)	E2SHB 2510 (As Passed Legislature)	ESSB 6339 (As Passed Legislature)	Executive Order
Growth Planning Hearings Boards	<ul style="list-style-type: none"> An hearing examiner appointed by a board may issue written conclusions of law in addition to written findings fact A board may request an hearing examiner to issue a written decision An appeal of a comprehensive plan or development regulation based on compliance with SEPA must be filed within 60 days after the plan or regulation is adopted The boards may adopt joint rules authorizing a decision of an hearing examiner to be the decision of a board Appeals of board decisions are to the Court of Appeals rather than to Thurston County Superior Court 	Not applicable	<ul style="list-style-type: none"> An hearing examiner appointed by a board may issue written conclusions of law in addition to written findings fact A board may request an hearing examiner to make a recommendation to the board The appeal of a comprehensive plan or development regulation based on compliance with SEPA must be filed within 60 days after the plan or regulation is adopted Board members and hearing examiners are subject to disqualification for prejudice 	No provision
Development Regulations and Permit Applications	<ul style="list-style-type: none"> City and county development regulations adopted under GMA must include a process for determining whether a development permit application is complete City or county adopting comprehensive plan under GMA must mail written notice within 10 days stating whether a development application is complete or what is necessary to make it complete 	Not applicable	<ul style="list-style-type: none"> Development regulations must establish time periods for local government action on specific development permit applications and provide procedures to determine whether an application is complete A city or county must notify a development applicant within 20 working days whether application is complete and, if not, what is required to complete it. 	No provision
Local Government SEPA Procedural Determinations	The decision of a city or county hearing examiner who reviews SEPA threshold determinations and EIS adequacy determinations may be appealed only to superior court	Not applicable	A city or county may authorize the decision of an hearing examiner who reviews SEPA threshold determinations and EIS adequacy determinations to be appealed to superior court. Otherwise the local government legislative authority considers the hearing examiner's recommendation.)	No provision

COMPARISON OF TASK FORCE REPORT WITH 1994 BILLS AND EO 94-07

	HB 2510 (Task Force Proposal)	E2SHB 2510 (As Passed Legislature)	ESSB 8339 (As Passed Legislature)	Executive Order
Model Toxics Control Act Remedial Actions	<ul style="list-style-type: none"> Ecology may enter into an agreed order with a potentially liable party for a remedial • Remedial actions under MTCA are not required to comply with procedural requirements of state air, water, solid waste, hazardous waste, and shoreline management laws. Substantive requirements of those statutes still apply. 	Not applicable	<ul style="list-style-type: none"> Ecology may enter into an agreed order with a potentially liable party to conduct a remedial action Remedial actions under MTCA are not required to comply with procedural requirements of state air, water, solid waste, hazardous waste, and shoreline management laws. Substantive requirements of those statutes still apply. 	No provision



STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (206) 753-6780

April 1, 1994

To The Honorable Speaker and Members,
The House of Representatives of the State of Washington

Ladies and Gentlemen:

I am returning herewith, without my approval as to sections 4, 5, 6, 13, 16(2), 20, 23, 25, 34, and 35, Engrossed Second Substitute House Bill No. 2510 entitled:

"AN ACT Relating to the implementation of the recommendations of the governor's task force on regulatory reform;"

On August 9, 1993, I signed Executive Order 93-06. The Executive Order directed state agencies to initiate several efforts to coordinate among themselves and to provide better and more useful information to the public. I stated three goals for regulatory reform in the Executive Order. They are:

- To institute immediate management improvements in state regulatory functions, reducing inefficiencies, conflicts, and delays.
- To develop long-term solutions to complex regulatory issues that, if left unresolved, could impede the orderly growth and sustained economic development of the state.
- To ensure that any regulatory reform solutions designed to support economic benefits to the state also ensure continued protection of the environment, the health, and the safety of our citizens.

The Executive Order also created the Governor's Task Force on Regulatory Reform, composed of representatives from a cross-section of state citizens and interest groups. The Task Force established three subcommittees to address the major issue areas set forth in the Executive Order and made its interim recommendation in its December 17, 1993 report upon which this legislation is based. The Task Force will continue its work through December 31, 1994 and will submit final recommendations to the Governor by December 1, 1994.

As introduced, House Bill No. 2510 met the goals I established for regulatory reform. I would have been able to sign all but one section had it passed as it was introduced. However, as passed by the Legislature, there are sections of Engrossed Second Substitute House Bill No. 2510 which I do not believe meet the goals I set for regulatory reform. In addition, many of the provisions of the bill would only increase the delays, bureaucracy, and paperwork of the rulemaking process imposing significant burdens on state

agencies without providing any additional meaningful involvement or reduced burden for the regulated community. This is directly counter to the goals of regulatory reform.

While I am disappointed that I am unable to sign this bill in its entirety, there are several provisions I will soon incorporate into an Executive Order. In particular, the Executive Order will direct agencies engaged in rulemaking to evaluate criteria similar to those set forth in section 4 as proposed by the Task Force. I will also be directing agencies to increase the level of technical assistance they provide to businesses and to individuals intent on meeting state regulations but who may be unclear on how to comply.

Of all of the issues addressed in the bill, section 4 served as the flash point for debate over regulatory reform during the 1994 Legislative Session. The Task Force, with considerable public comment, concluded that the state agencies needed additional direction in the rulemaking process and recommended a series of criteria for the agencies to consider before adopting a rule. I fully support the concept that agencies consider these criteria in their rulemaking process. However, section 4 strays from the carefully balanced approach in the original bill. The bill provided the proper direction to agencies without creating additional, unnecessary paperwork and avoided turning rulemaking into a judicial like process which only encourages litigation. If this section is allowed to become law, the only certainty is that litigation will ensue over the meaning of its various provisions.

In addition, the specific criteria set forth in section 4 go well beyond the criteria proposed in the original bill. For example, this section requires an agency to determine that any overlap, duplication or difference between the rule and any federal law is necessary to achieve the objectives of the statute. There are many circumstances where differences from federal rules may be justified to protect the safety and quality of life in our state, yet these provisions would make it nearly impossible for an agency to adopt rules on a subject over which the federal government has adopted rules or passed legislation.

Section 4 also requires an agency to determine that the likely costs of a rule justify its likely benefits. While the original bill required agencies to consider the economic and environmental consequences of adopting a rule, the cost benefit analysis approach in section 4 goes beyond that requirement. This provision mandates a time consuming, expensive and controversial process. Although it is appropriate for agencies to consider the benefits and costs of their actions, many of the factors which should be considered, such as health, safety and environmental concerns, do not lend themselves to a formal cost-benefit determination.

Section 4 also requires agencies to determine that there are no reasonable alternatives proposed during the rule-making process which are less burdensome on those required to comply. This criteria creates the unacceptable assumption that impacts on the regulated community should be the only consideration for an agency when it adopts a rule. Agencies should also consider the cost to the taxpayers, to the environment and to the public's safety.

Section 4, in combination with section 5, was identified by state agencies as being particularly expensive to implement. The legislature did not appropriate funds in the supplemental budget to defray the added costs which this section would impose. For all of the above reasons, I am vetoing section 4.

Section 5 applies only to rules subject to the provisions of section 4. Therefore, I am also vetoing section 5.

Section 6 amends an existing statute which allows a person to petition an agency to adopt, amend, or repeal a rule, by allowing an appeal of an agency's decision to the governor. Section 6 directs the petitioner to address several specific factors which the agencies are not required to consider when they engage in rule-making. By including these as elements of the petition, the implication is made that they are also standards for rule adoption when in fact they are not. For this reason, I am vetoing section 6.

Section 13 is a new section which incorporates part of the requirements currently included in RCW 19.85.060. Section 13 states that an agency is not required to prepare a small business economic impact statement if the rule is adopted in order to comply with federal law. RCW 19.85.060, which section 13 replaces, provides that an agency is not required to prepare the statement if the rule is adopted to comply with federal law or regulation. While this may have been an inadvertent action by the legislature, deletion of these words increases the circumstances under which agencies will need to prepare an impact statement even though the rule is required by the federal government. For this reason, I am vetoing section 13.

Section 16 (2) repeals RCW 19.85.060, which contains the exemption addressed in section 13. Because I am vetoing section 13, I am also vetoing section 16(2).

Section 20 gives the Joint Administrative Rules Review Committee (JARRC) the ability to establish a rebuttable presumption in judicial proceedings that a rule does not comply with the legislature's intent. The Task Force included this recommendation in its report. It has been my wish to sign into law those recommendations in this bill which accurately reflect the recommendations of the Task Force. However, I have serious concerns about the constitutionality of this provision under the separation of powers doctrine. A committee of the legislature cannot be given authority to invalidate a rule. See, Immigration & Naturalization Service v. Chadha, 462 U.S. 919 (1983). Allowing a committee of the legislature to affect the legal status of an agency rule adopted in compliance with all statutory procedures is an unwarranted intrusion into the role of the executive branch.

Through section 19 of the bill the legislature's authority, to object to rules is enhanced by lowering the threshold vote necessary for JARRC to recommend suspension of a rule. In addition, if the governor does not suspend the rule, section 19 provides that JARRC's recommendation is treated by the agency as a petition to repeal the rule. JARRC also may recommend to the full Legislature corrective legislation if it is dissatisfied with the agency's response to its objections. These are appropriate means to increase the authority of JARRC. For these reasons, I am vetoing section 20.

Section 23 addresses the issue of technical assistance and its relationship to enforcement. The original bill included a provision requiring agencies to provide technical assistance as an alternative to traditional enforcement approaches. This provision was based on successful programs in the Department of Ecology and the Department of Labor and Industries. Many other agencies have also developed similar approaches to enforcement. Section 23 goes beyond this positive approach to technical assistance by allowing a business which requests assistance from a selected set of state agencies to avoid penalties for violation of any rules administered by the agency unless the business has previously violated the same

April 1, 1994

rule or does so knowingly. While I support increased technical assistance from agencies and will include this in my Executive Order, I cannot support the idea that ignorance is an excuse to violate state rules. This provision will be more likely to further the confrontational approach many businesses have complained about instead of fostering cooperation between business and state regulators

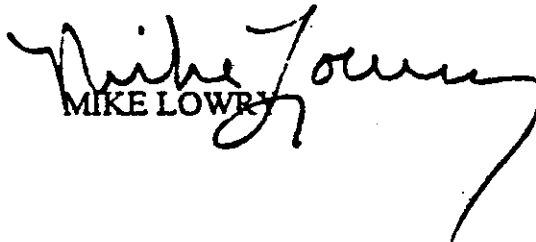
There is also a serious question about the constitutionality of this provision since it applies only to business entities. Article 1, section 12 of the Washington Constitution prohibits the granting of privileges and immunities to corporations that are not available to all others. Many individual citizens, as well as cities and counties, are required to comply with the same statutes and rules as businesses. They are not afforded the same favorable treatment this section would provide to business. For these reasons, I am vetoing section 23.

Section 25 modifies the requirements of the Administrative Procedure Act relating to the exhaustion of administrative remedies. A reference to the appeal provided for in section 6 is added. Since I have vetoed section 6, this section is also vetoed.

Sections 34 and 35 were added to Engrossed Second Substitute House Bill No. 2510 by the Conference Committee and received no discussion or debate prior to that time. They require city and county governments to expend considerable resources to coordinate their regulatory activities with the state and federal governments. As with so many sections of this bill, the goals of these two sections are sound. However, the requirements imposed by these two sections will only burden cities and counties without any benefit of the topic of coordinating local and state permitting and regulatory decisions is under active consideration by the Task Force. It is premature to enact these sections at this time. I am therefore vetoing sections 34 and 35.

With the exception of sections 4, 5, 6, 13, 16(2), 20, 23, 25, 34, and 35, Engrossed Second Substitute House Bill 2510 is approved.

Respectfully submitted,


MIKE LOWRY

Appendix C

1. June 1994 Executive Order EO 94-07



STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (206) 753-6780

EO 94-07

EXECUTIVE ORDER
ON REGULATORY REFORM

I. Introduction.

A. **Purpose.** This executive order is adopted to increase public confidence in agency rule making activities, to improve coordination among state agencies, to improve the efficiency and effectiveness of regulatory programs, and to avoid imposing undue burdens on business, the public, local governments, and state agencies. Except as otherwise provided herein, this Executive Order supplements Executive Order 93-06 and provides state agencies guidance in meeting their regulatory objectives. It is the purpose of this Executive Order to:

1. Reinforce the accountability of agency directors to the Governor for the regulatory actions of their agencies.
2. Provide better information to the Governor, the Legislature, and the public about the implementation of agency regulatory programs.
3. Establish factors for agencies to consider during the rule making process.
4. Encourage voluntary compliance with statutes and rules through the provision of technical assistance.
5. Protect the public health and safety and the environment, promote the state's economy, and maintain the quality of life of the citizens of the state.

B. **Philosophy of Regulation.** Agency regulation is intended to benefit both the public and those who are affected by the rules. The effective use of regulation assures equal treatment for the regulated community. The use of rules provides that agency policies are made in a public setting. Ineffective regulation can result in time-consuming and expensive procedures providing little public or private benefit. In order to further the effective use of regulation, the following principles shall guide agencies in their program implementation:

1. Agencies should focus, within the constraints imposed by statutory requirements, on those issues posing greater risks to the public or from which the public can expect to receive greater benefits.
2. Agencies should attempt to use less intrusive methods of achieving desired outcomes.

3. Agencies should be open to reasonable alternative methods of achieving regulatory objectives.
 4. Agencies should approach their regulatory duties assuming that most individuals and businesses who are subject to regulation will attempt to comply with the law, particularly when they are given sufficient information. In this context, enforcement assures that the majority of a regulated community who do intend to comply with the law are not placed at a competitive disadvantage.
 5. Agencies should develop methods to determine whether regulatory programs are meeting program objectives.
 6. In addition to an agency director's legal responsibility over agency operations, each agency director shall be responsible to the Governor for assuring that the spirit and intent of this Executive Order are carried out.
- C. Effect on Quasi-judicial Boards. The provisions of this Executive Order do not apply to a quasi-judicial board or commission as it relates to its adjudicatory proceedings.

II. Planning

- A. Each state agency shall prepare an annual fiscal year agenda for significant rules under development. The agenda shall be adopted not later than June 30. The agenda shall be made available upon request to any person and shall be published by the agency in the Washington State Register. The agenda shall also be submitted to the director of the Office of Financial Management and to any other state agency which may reasonably be expected to have an interest in the subject of rules which will be developed.
- B. Paragraph A. of Section V. of EO 93-06, directing state agencies to adopt a list of potential rule making activities, is rescinded.

III. Office of Financial Management Review Procedures

- A. Quarterly Reports to the Office of Financial Management. State agencies shall submit to the Office of Financial Management each quarter a report of their rule adoption activities for the prior quarter. The report shall be provided to the Office of Financial Management in the manner and format required by the Office of Financial Management and shall include at least the following information for new, amended, and repealed rules:
 1. The number adopted, proposed for adoption, and proposals withdrawn.
 2. The number adopted as emergency rules.
 3. The number adopted in order to comply with federal statute, with federal rules or standards, and with recently enacted state statutes.
 4. The number adopted at the request of a non-governmental entity.

5. The number adopted on the agency's own initiative.
 6. The number adopted in order to clarify, streamline, or reform agency procedures.
 7. The number of petitions for review of rules received by the agency.
 8. The number of rules appealed to superior court.
 9. The number adopted using negotiated rule making, pilot rule making, or other alternative rule making mechanisms.
 10. Any other summary information required by the director of the Office of Financial Management.
 11. For purposes of the report required by this section, each Washington State Register filing shall be considered as a separate rule.
- B. When an agency commences a significant rule making activity, as determined by the agency, it shall provide a copy of its notice of intent, required by RCW 34.05.310(1), to the director of the Office of Financial Management and to other state agencies that may have an interest in or be affected by the rule making.
- C. If a state agency director believes that another state agency is engaging in rule making activities which may potentially conflict with its rules or policies, the agency director shall notify the other agency and the director of the Office of Financial Management of his or her concern.
- D. Agencies shall attempt to resolve disputes among themselves using the procedures established in EO 93-06 and RCW 34.05.310. If agencies are unable to resolve a dispute within a reasonable period of time, the director of the Office of Financial Management shall collect appropriate information concerning the dispute and, in the director's discretion, either resolve the dispute or inform the Governor of the nature of the dispute and provide a recommendation for resolution.

IV. Regulatory Fiscal Note.

- A. The Office of Financial Management shall revise the fiscal note form to include the following information on each bill for which a fiscal note is prepared: whether new rules are required or existing rules must be amended in order to implement the legislation, the approximate cost involved in developing those rules, the types of entities which may potentially be affected by the legislation, and whether other agencies have authority over the same subject matter.
- B. In its review of agency request legislation prepared for introduction in the 1995 legislative session, the Office of Financial Management shall review the legislation to ensure that any proposed delegation of rule making authority is clear in its intent.

V. Rule Adoption Factors.

- A. As early in the rule-development process as possible, but not later than the time a rule is published for comment and adoption as a permanent rule, an agency, based on reasonably available information, shall consider and prepare a written analysis of the proposed rule addressing the following:
 - 1. The objective of the rule.
 - 2. Whether changes to other rules or statutes would achieve the same objective.
 - 3. How the provisions of the proposed rule will be coordinated with other rules of the agency and rules of other state agencies, local governments, and the federal government.
 - 4. Whether it has chosen a reasonable, cost-effective manner to achieve the regulatory objective.
 - 5. The anticipated environmental and fiscal consequences of adopting and not adopting the proposed rule, recognizing the difficulty of quantifying some consequences.
- B. The agency shall identify and assess alternative forms of regulation and, where appropriate, shall specify performance standards in addition to standards for behavior and manner of compliance.
- C. If a rule proposed in order to comply with federal law contains significant differences from a comparable federal rule or standard, or if a proposed rule provides differences in application to public and private entities, the agency shall provide a written analysis explaining the nature of the differences, evaluating their consequences, and providing a rationale for adopting the rule as drafted.
- D. An agency shall include the written analyses required by Part V in the rule making file and shall make the analyses available to any person upon request. The analyses shall be updated based on additional information received by the agency during the rule making process.
- E. An agency is encouraged, but not required, to comply with this Part V when adopting an emergency rule under RCW 34.05.350.

VI. Voluntary Compliance through Technical Assistance

- A. To the maximum extent feasible, within the limits of an agency's current budget and consistent with statutory requirements, an agency with regulatory enforcement authority shall promote voluntary compliance with state and federal law enforced by the agency and the agency's rules through the provision of technical assistance, including technical assistance visits.

B. For purposes of this Executive Order, technical assistance includes:

1. Information on the laws, rules, compliance methods, and technologies applicable to the agency's programs;
2. Information on methods to avoid compliance problems;
3. Assistance in applying for permits; and
4. Information on the mission, goals, and objectives of the program.

C. For the purposes of this Executive Order, a technical assistance visit is a visit of an agency employee to a facility, business, or other location that is declared by the agency employee at the beginning of the visit to be a technical assistance visit.

D. During a technical assistance visit, an agency employee shall inform the owner or operator of the facility of any violations of law or agency rules and provide technical assistance concerning compliance.

E. Except as provided in Paragraph G:

1. A technical assistance visit shall not be regarded as an inspection or investigation; and
2. The owner or operator shall be given a reasonable period of time to correct violations before any penalty or sanction is imposed for those violations.

F. An agency may reinspect a facility within a reasonable period of time after a technical assistance visit and take appropriate enforcement action for any uncorrected violations.

G. An agency employee who observes a violation during a technical assistance visit may take immediate enforcement action if:

1. The violation places a person in danger of death or bodily harm, is causing or is likely to cause more than minor environmental harm, presents a risk to worker or public health and safety, or is causing or is likely to cause physical damage to the property of others in an amount exceeding one thousand dollars; or
2. The person has previously been subject to an enforcement action for the same violation.

VII. Effective Dates

A. The application of this Executive Order is prospective only.

B. For fiscal year 1995, the agenda required by Part II shall be adopted not later than August 31, 1994.

- C. An agency is encouraged, but is not required, to comply with the provisions of Part V of this Executive Order for any rule which is proposed for adoption by filing in the Washington State Register prior to July 31, 1994.
- D. Agencies shall report the information required by Part III., Paragraph A, beginning with the calendar quarter ending September 30, 1994.

This order shall take effect immediately.



IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the State of Washington to be affixed at Olympia on this 6TH day of June, A.D., nineteen hundred and ninety-four.

Mike Jowers
Governor of Washington

BY THE GOVERNOR:

Ann Hume

Secretary of State

Appendix D

1. Public Hearing Summary Report

Written and Oral Comments Submitted During the Public Hearing Process

Date	Name	Public Hearing	Company	Summary Comments
15-Dec-94	Janet Adams		League of women Voters of Bellingham-Whatcom County	The issued of shorelines protection are substantially different from those of most other growth and development issues, so the degree to which shoreline management can properly be subsumed into Growth Management is limited. A requirements for the SHB to issue its decisions within 120 days would not allow nearly enough time, given the complexity and importance of many of the matters which come before it, and would necessitate decisions based on inadequate information or no information from parties or agencies with a substantial interest in the proceedings. Do not shorten the appeal period or modify the process for stays pending appeal. We do not support any recommendation which would give planning under GMA precedence over or undercut SEPA policy at the project level.
15-Dec-94	R.W. Merriam		North Kingston Community Assoc.	The existing SEPA regulations and GMA are necessary and complement each other. Numerous counties in concert with developers and real estate interests have managed to soften the SEPA regulations and make a sham of the EIS system by granting DNS rulings based on inaccurate statements and unadulterated false hoods. The Kingston Skyline Development is a classic example of a DNS granted to a well heeled developer by the Kitsap County Commissioners. The current version of the Kitsap County Comprehensive Plan is still being manipulated by the County Commissioners and is in violation of the intent and direction of the Amend GMA to ensure that the public is apprised of advisory opinions of the office of the attorney general as to when a proposed action, decision or regulation may be an unconstitutional taking of private property, ensure that the public has access to the process used by the state and local governments to determine whether specific land use decisions may violate the constitutional protection of private property and make available litigation costs to prevailing landowners in certain situations. See memo for complete details.
12-Dec-94	Timothy S. Boyd		WA Forest Protection Association	A dispersion of the permitting process opens the door to review by unqualified and uninterested personnel, a loss of coordination in watersheds spanning more than one local governmental entity and uniformity in decisions and
9-Dec-94	CDR & Mrs. R.J. Evans		concerned citizens	There has not been sufficient study as yet to justify viewing GMA and SEPA as "either/or". Present GMA rules must not replace the
7-Dec-94	Janice R. Ridges		concerned citizen	

Written and Oral Comments Submitted During the Public Hearing Process

Date	Name	Public Hearing	Company	Summary Comments
2-Dec-94	Gerald Steel			more specific project-level SEPA rules. Retain the hearing boards, retain SMA's thirty-day appeal process, do not impose the cost of the opposing party's legal fees on a losing party. Clearly most cost effective to address general environmental impacts by GMA environmental regulations and to address more site and project specific environmental impacts by SEPA type review. Consolidated permit process - a lead agency should be identified for every project and all submittals for the project should be processed by the lead agency. Judicial review reform - strengthen the authority of the Growth Planning Hearings Boards.
5-Dec-94	Joanna A. Buehler		Save Lake Sammamish	It is virtually impossible for necessary in-depth review to be accomplished through comprehensive plans and development regulations. there would also be an unfair shift in financial responsibility. SLS believes such a proposed shift in environmental review would represent a significant weakening of environmental and personal protection and is not in the best interests of the citizens of this State. Although it is still expensive, intimidating and not easy to appeal to hearings boards, they offer a unique forum for fairness.
1-Dec-94	Bill Hensaw			Most important recommendation is to set up a legislative review process looking at existing rules and regulations
30-Nov-94	Peter B. Bosserman		Benton/Franklin Co. Clean Air Authority	Support privatize review of plans. This has been working in the Air Quality Control. Better policing by the State Board of Registration of Professional Engineers is required if privatization becomes extensive. you need to defend against the impression that the fox is guarding the chickens by having a government executive sign all permits after the privatized PE draft and signs it.
30-Nov-94	Steven C. Townsend		King County Land Use Services	Oppose professional certification, concern is who is paying for the review, if the developer is paying, who is representing the public interest Is governmental agency allows private professionals to review and approve permits, does that eliminate the government from any liability?
30-Nov-94	Margo Wolf		Spokane Audubon Society	Environmental representation is sorrowfully lacking. Disagree with raising the threshold for substantial development permits and shortening the appeal period.
30-Nov-94	David L. South		DOE, Toxics Cleanup Program	Privatization of permit review, will not shift liability from state, state will be named as the certifier of the firms competence, state will have to regulate private sector firms or we will be abrogating our

Written and Oral Comments Submitted During the Public Hearing Process

Date	Name	Public Hearing	Company	Summary Comments
28-Nov-94	Gary Lowe			responsibility under the law to protect the public
28-Nov-94	W.V. & Barbara Wells		WA St. Assoc. of Counties concerned citizens	Corrected letter originally dated Nov. 15. General GMA rules should not be used to replace specific SEPA rules. Hearings boards must be retained as well as the 30-day appeal process, cost of opposing party legal fees should not be imposed on a losing party.
26-Nov-94	Robert G. Dreyfuss		concerned citizen	Shocked at lack of balance in the TF report. Task Force reform seems to mean: watering down SEPA, and expedite development permitting and reduce public interference. Close observer of development in Clark County. See detailed comments re clark county procedures for GMA and SEPA
26-Nov-94	James L. Olmstead		Attorney at Law, clark county	Deeply opposed to the current recommendations of the task force. TF is advancing its own pro-development agenda in derogation of the best interests of the citizens of WA. Reconsider positions on the issued discussed in attached testimony. Detailed documentation to environmental colleagues. See public interest landmines in the TF reports. Consensus is that the Task Force is attempting to advance an unabashedly pro-development agendas, with the Governor's official blessing.
23-Nov-94	Peter Hurley		WA Environmental Council	TF recommendation would expedite the land use permitting process, but at serious cost to public health, environment and increase public disillusionment with government. See detailed suggestions.
23-Nov-94	Bill Henshaw		concerned citizen	Recommend setting up a legislative review process which looks at existing rules and regulations to determine how they can be implemented and how to eliminate overlap. Rules and regulations should be promulgated at the local level.
23-Nov-94	Harold W. Macomber		People Opposing Wilder Ranch Rezoning	Do not weaken Growth Management.
23-Nov-94	Clifford Webster		Architects & Engr. Legislative Council	Supports: concept of minimum qualification for plan reviewers and code inspectors through state certification or registration. Seek more uniformity of code interpretation across jurisdictions, expedited timelines, and clearly delineated line for liability purposes, sunset review provision.
21-Nov-94	Katherine Baros Friedt		Department of Licensing	We support the concepts of creating a grant fund to support small agencies and having access to independent experts in mediation and policy development.
21-Nov-94	Dennis J. McLerran		Puget Sound Air Pollution Control	Proposal for inclusion of a SEPA categorical exemption for air

Written and Oral Comments Submitted During the Public Hearing Process

Date	Name	Public Hearing	Company	Summary Comments
21-Nov-94	Linda Crerar		DOE, Water and Shorelands	operating permits. Wish to continue discussion over the next year in context of larger SEPA and GMA reforms. Support integrate the SMA and GMA and continuation of Ecology's role. Concern with Ecology's appeal authority on substantial development permits, dealing with local process and Shoreline Hearings Board.
21-Nov-94	Charlotte Coffey		concerned citizen	Concerned with statement: "the public must understand and accept the consequences of decisions as they are made." Never heard of such a principle in any public document.
21-Nov-94	Ron Holtcamp		WA State Council of Trout Unlimited	Do not support changes that would allow any issuance of a hydraulics permit from any agency other than the Dept. of Fish and Wildlife. Suggestion in Sec.III.A, "the lack of timely comments be construed as the lack of objection and restrict appeals" to be undemocratic and unrealistic. Recommendations in Sec. IV.B modifying shoreline hearing board procedures are far too restrictive of the public's right to participate and comment on projects related to public trust resources. Do not downplay the significance of resource agencies mandates and their degree of professionalism.
21-Nov-94	Alan Rathbun		Board Registration for Professional Engineers and Land Surveyors	Recommendations relative to certification of professionals in the implementation of state codes has potential of significantly impacting this program. We think additional study is necessary to assure that the solution is appropriate.
20-Nov-94	Gene & Marilyn Derig		concerned citizen	project level review must be maintained, retain the hearings boards, retain SMA's appeal process, do not impose the cost of the opposing party's legal fees on a losing party.
19-Nov-94	Jane Cooper		concerned citizen	Do not weaken SEPA leave it intact.
19-Nov-94	Andrew Stuffer		CPR Services	Support certification of professionals in the implementation of state codes. See letter for details
18-Nov-94	Steven C. Townsend		King County Land Use Services Division	As a governmental employee involved in permit review process, I see on a daily basis the problems caused by private review and approval of permits. Most obvious concern is who is paying for the review? An additional issue is liability. If some permits are so simple and clear cut as to allow private review and approval, why require a permit at all? I think the idea for private certification by professionals is a bad idea.
18-Nov-94	Deborah Johnson		concerned citizen	SEPA process: too broad a hand may enable environmentally-sensitive projects to proceed with too little review, consolidating all

Written and Oral Comments Submitted During the Public Hearing Process

Date	Name	Public Hearing	Company	Summary Comments
				permits to a single process could impose unnecessary costs on an applicant. Planning and decision making process is too broad.
18-Nov-94	Joyce & Carelton Lindberg		Brodiea Hill Ranch	Opposed to any attempt to loosen controls now in place.
17-Nov-94	Joanne Long-Woods			Object to elimination and/or significant modification of the SEPA process. GMA was not intended to take place of environmental review on a site specific basis.
17-Nov-94	Margaret Yeoman		concerned citizen	Opposed to any lessening to appeal a decision
17-Nov-94	Richard J. Leumont		Lower Columbia Basin Audubon	Keep SEPA, we need it for project-level review. Do not use procedural reforms as a cover for gutting the regulations that ensure environmental protection, health and safety for the people of Washington. Do not try to fix Shoreline Management Act and Shorelines Hearing Board.
17-Nov-94	Gretchen Starke		Vancouver Audubon Society	Worried about loss of project-level SEPA review.
17-Nov-94	Rick S. Bender		WA State Labor Council	Must be a clear definition of what constitutes a serious as opposed to non-serious violation, re certification of private companies for reviewing plans for code compliance would result in the fox being in charge of the hen house, generally agree with effort to merge Shoreline management and SEPA and GMA.
16-Nov-94	Lyle & Barbara Craner		concerned citizen	Do not integrate SMA into the GMA until it can prove it can protect shorelines.
16-Nov-94	Ken Wilcox		Osprey Environmental Services	Oppose incorporation of use & develop regs under SMA into GMA at this time. Support notions of voluntary compliance, market incentives and professional certification to help reduce bureaucracy.
16-Nov-94	Lorraine Bonifaci		concerned citizen	Bottom line is clean water, minimal impact on habitat
16-Nov-94	William Hawkins		concerned citizen	Do not weaken state's environmental policy act. Keep SEPA for project-level review, make developers pay the cost for review, do not restrict citizen's rights to appeal land use decisions.
15-Nov-94	Sue Lorentz		concerned citizen	Proposal to incorporate environmental review of a project into GMA and land-use planning is shortsighted. Cost of environmental review of a project must continue to be borne by the developer not by the taxpayers, there must be no restriction on citizens' rights to appeal land-use decisions, do not change the Shorelines Management Act, public participation and comment must be assured at the beginning of the permitting processes.
15-Nov-94	Elsa Gruber		Skagit Audubon Society	Concerned that many proposals under consideration would weaken, rather than strengthen the protection of our natural resources,

Written and Oral Comments Submitted During the Public Hearing Process

Date	Name	Public Hearing	Company	Summary Comments
15-Nov-94	Bill Buyer	Bellingham	concerned citizen	protection critical to the economic and environmental wellbeing of Washington State.
15-Nov-94	Keith A. Bode	Bellingham	Attorney at Law	Improve forms, merge shorelines & SEPA applications
15-Nov-94	James K. Kaemingk	Bellingham	Jim's Electric, Inc.	Too much liberal edge to regulations
15-Nov-94	Dave Peterson	Bellingham	President, Pioneer Ford, Inc.	Agency interpretation of rules sometimes wrong
15-Nov-94	Marjorie Reichhardt	Bellingham	Reichhardt & Ebe engineering, Inc.	Small business has too many layers of taxes, lift unnecessary personal property tax
15-Nov-94	Robert Hamstra	Bellingham	Mt. Baker Silo, Inc.	Less taxes and less regulations
15-Nov-94	Roger Wagoner		American Planning Association	Strong interest in growth management issues, integration of planning and environmental review and permitting are important first step in strengthening local comprehensive plans, support the use of hearing examiners, hiring professionals can be very helpful for jurisdictions with inadequate staffing, successful reg reform depends on having more detailed plans and regulations developed through public participation and environmental review.
15-Nov-94	Carolyn Logue	Bellingham	NFIB	Support consolidating the permit process. Voluntary compliance and technical assistance - need to give businesses the benefit of the doubt. Allow pilot rule approach as an alternative to a small business impact statement. Rules review - advocate 5 year sunset provision. Worried about - 10 years from now someone may forget it is on the books. Let the public know how to get to this ongoing process.
15-Nov-94	Mary Mauerman	Bellingham	A. I. Architects	Supports the rights of owners of timely regulatory review, State guidance is needed but local conditions need to be taken into account. SEPA recommendation to eliminate duplicative review is a good step, support creation of a state revolving fund, keep planning at the most local level, appeals process is still confusing.
15-Nov-94	Mike Smith	Bellingham	Architect Engineers and Leg Council	Support current practice of building departments contracting with private professionals to help review under the building dept. supervision. Some plans are going through a local jurisdiction to an independent company with several more steps along the way adding more time to the review process - further defeating our purpose. Further considerations in the appeals process must be made. The design professionals of Washington seek more in code interpretation across jurisdictions, expedited timelines. Support sunset review provisions. Draft proposals has potential to get goals. DLC recommends any proposal containing sunset review provision.

Written and Oral Comments Submitted During the Public Hearing Process

Date	Name	Public Hearing	Company	Summary Comments
15-Nov-94	Tony Meinhardt	Bellingham		Potential disproportional impact of rules and regulations on businesses. Additional testimony given by Gary Smith in Seattle, regarding concept that would allow agencies to for-go providing small business economic impact statement in lieu of setting up the pilot rule making process and proposing rules. Submit draft language to that end for the task force's consideration. Provided to the staff for their analysis.
15-Nov-94	Skip Richards	Bellingham		Regulation is hurting everyone - put regulation on the regulators. Current system reserves greatest punishment for those who try to do the right thing and play by the rules. See memo for detailed recommendations to SEPA/GMA
15-Nov-94	Dave Wolf	Bellingham		Alternative approach of sub-committees professional certification recommendations. Cannot keep up with the regulatory burden that keeps coming down from the state without any funding given by the state to the local level to support that regulatory enforcement burden. Proposal is admirable but misses the target dramatically. Bases on an incomplete perception of the total code enforcement picture. See the City Attorney's opinion in the Draft dated October 4, 1994. Engineers Board is an inappropriate board to take it to. Number of other regulatory reforms that could make a contribution to compressing the building permit process. Propose idea for setting up a state board to handle appeals and interpretations without regard to the local deviations that go on.
15-Nov-94	Oliver Zurbel	Bellingham		No personal stake in the regulations proposed, except for future and healthy living in Whatcom County. Very interesting is the idea of encouraging market incentives. Seems like the purpose Government set up to regulate large businesses and corporations is the protection of the greater good of the people. Need to pass laws and regulations to stop unfettered development. Any movement towards regulatory reform that will in fact weaken regulation is not reform, I am in favor of, lets simplify the process, lets work with the permits and not have to make individuals go through bureaucratic loop hole. Not in favor of weakening the regulations and laws.
15-Nov-94	Gerald Steel	Bellingham		Speaking for Friends of Skagit Valley. Submit additional detail commits. Overly trying to get to the goal of regulatory reform without meeting the mandates of the Governor to protect the environment. Concerned with the appeals process of GMA. Can

Written and Oral Comments Submitted During the Public Hearing Process

Date	Name	Public Hearing	Company	Summary Comments
15-Nov-94	John Darnell	Bellingham		include SEPA timelines in the integration of SEPA and GMA, but can't avoid projects specific and sites specific review for issues. Consolidate local permit process, yes. Coordinate state permit procedure, yes.
15-Nov-94	Gordon Aleshire	Bellingham		City Building Official for Tumwater- concerns with the Privatization and Certifications of plans examiners. Concerned with creating another level of government regulatory oversight for the license and certifications. Permitting process has problems. Support in help task force to come up with some workable solutions to help permitting process.
15-Nov-94	Mike Kenard	Bellingham		Concerns on permits being processed in a timely manner, offer the resources and people in his department to assist for this effort
15-Nov-94	Bob Hart	Bellingham		Small Business owner - Alternative Rule Proposal and pilot program. Applaud the whole concept of pilot approach.
15-Nov-94	Ken Ryan	Bellingham		All counties land use process is too complex, hardly support your efforts. Funding, mandates that come down that do not have a funding source with them need to have some mechanism to have that paid for. We oppose state wide standards. Proposals to allow counties or cities to take over further jurisdiction in hydraulics or other permits of the state, if sent down to us please send some training or funding. Substantial weight should be given to local decision making process, do not feel this has been happening with the Growth Hearings Board. Please address legislatively or through the court system.
15-Nov-94	Carol Ehlers	Bellingham		Applauds the task force goal of reducing red-tape. Regulatory reform should not come at expense to environmental protection. The voluntary compliance seems unusual. The shortening of Appeals periods does not give people a clear shot. No fines for first time offenders also find troubling - won't work.
15-Nov-94	Andrea Xaver	Bellingham	Save Big Lake Society	Agrees with Ken Ryan. Would like to have information available in the County Law Library or in local community college available in evening for local access. Would like to know what laws are being passed in State Legislature.
15-Nov-94		Bellingham		Do not let cost of environmental review become the burden of the general community. SEPA review process must remain. Supports simplifying the regulatory process as long environmental protection is maintained. Growth Management Act is not as comprehensive.

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				Does not address specific details of environmental impact statements. The Task Force does not address enforcement or funding. Cost of the environmental process should not become the burden of the general community.
15-Nov-94	Barbara Rudge	Bellingham		SEPA gives the public the opportunity to review and understand the impacts of individual projects on a site by site basis. The public asked for this law and deserves the right to see it protected. Concern for SEPA GMA document on Section 4-D.
15-Nov-94	Renee Reimer	Bellingham		Submitted concerns from various businesses
15-Nov-94	Elsa Gruber	Bellingham		Support reform that improves existing environmental protection while streamlining the regulatory process. Concern that many proposals under consideration might weaken instead of strengthen our protection of natural resources. My recommendations include 1) SEPA review must be retained, the GMA is no substitute for SEPA, enforcement of current regulations seems to be absent from the task force report-enforcement is a vital part of an effective regulatory system. I am opposing the task force proposal to delegate hydraulic project approval to local governments which do not have the expertise necessary to make decisions.
15-Nov-94	Gene Derig	Bellingham		
15-Nov-94	June Kite	Bellingham	Friends of Conway Country Living	Do not reduce citizens ability to be heard. One blanket does not fit all areas. Subarea planning is a must. Any proposal that reduce the ability of the individual citizen. SEPA and GMA have become most important to me and my part of the county.
15-Nov-94	Minda Phillips	Bellingham		Submitting written comments, concerns about the rule making process and the ability of agencies to implement rules without proper procedure.
15-Nov-94	Patricia Decker	Bellingham		Integration of the planning that is discussed in GMA, environmental review process, and the permitting process discussed in Sections 2 and 3 in GMA report.
15-Nov-94	Sue Lorentz	Bellingham		
15-Nov-94	Janet Adams	Bellingham		
15-Nov-94	Robert Schroder	Bellingham		
15-Nov-94	Bill Henshaw	Bellingham		
15-Nov-94	Dave Brown	Bellingham		
15-Nov-94	Nelda Sigurdson	Bellingham		

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15-Nov-94	Michele Mead	Bellingham		
15-Nov-94	Robert H. Keller		concerned citizen	Please discount those builders and speculators who scream about their "rights". Their bottom line is the right to make a lot of money. SEPA process allows timely citizen input. SEPA process should continue and should run concurrently with the fully implemented Growth Management Act.
15-Nov-94	Lyle A. Craner, B. A. Craner			Local government attitude toward your business report, majority see local government attitude as indifference or a hindrance, direct impact: taxes, govt. reg., employment reg, city and state regulations on business is overwhelming.
15-Nov-94	Bill Geyer	Bellingham		Integrated land use planning & environmental review, assure funding for planning, local control & critical area standards and further evaluation beyond 1995
15-Nov-94	Roger Almskaar for Joe Burton	Bellingham	WA Assoc of Realtors	Perform real regulatory reform without gutting environmental protection and public health and safety. Oppose publicly funding the costs of environmental review for development. Strong conflict of interest inherent in allowing professional certification to substitute for governmental analysis. Do not include shoreline management act and its jurisdictional board in process. Reference: "Green is Gold", and Professor Stephen Meyer's 50 state study of environmental regulations and economic health.
15-Nov-94	Sherilyn Wells	Bellingham	WA Environmental Council	
15-Nov-94	Wayne Sorenson	Bellingham		
	Nel Batker		concerned citizen	
15-Nov-94	Leslie D. Ryan		concerned citizen	Environmental protection must take precedence over reducing government responsibility, education before enforcement, any restrictions upon the SEPA review would significantly reduce the level of opportunity for the public to comment or appeal a local decision.
15-Nov-94	Nell Wolever		concerned citizen	Opposed to weakening SEPA. Ensure consensus is reached on legislative language before being publicly released. Make no significant changes in the Shoreline Management Act.
15-Nov-94	Corinne R. Hensley		concerned citizen	Extensive comments on Draft 4 SEPA/GMA see 3 page memo.
15-Nov-94	Kathy Fletcher		People for Puget Sound	Believe several proposals would weaken environmental protection. Keep SEPA project level review, Adoption of regional criteria, citizens must be given early and well-publicized notice of land use application and project approvals, Oppose TF proposal to delegate

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15-Nov-94	Howard A. Pellett		concerned citizen	hydraulic project approval to local governments, adequate funding to enable state and local agencies to meet deadlines, TE should reach consensus on exact language of any proposed legislation before the report or legislation are released. Oppose proposal to eliminate the State Environmental Protection Act provisions from project-level review of developments. Costs for environmental review must continue to be borne by developers and not local governments. Oppose restriction of citizens' rights to appeal land use decisions.
15-Nov-94	Paul & Beth Wilson		concerned citizen	SMA & SHB should not be altered in their authority or function.
15-Nov-94	Lauri Vigue		Sasquatch Group	No federal standards cap - protect health, safety and environs.
15-Nov-94	Robert & Alicelia Warren		concerned citizen	Continue standards provided by project-level SEPA review.
15-Nov-94	Elizabeth Lathrop		concerned citizen	Need long range sustainability of resources.
15-Nov-94	Ione Clagett		concerned citizen	Do not shift project-level review under SEPA, protect environment.
15-Nov-94	Doyle McClure		concerned citizen	Maintain and strengthen environmental laws statewide.
15-Nov-94	David M. Schmalz		North Cascades Audubon Society	Do not lessen environmental protection.
15-Nov-94	Tom Donnelly		Kitsap Citizens for Rural Preservation	Protect the environment, fortify protection regulation.
15-Nov-94	Gary D. Lowe		WA State Association of Counties	Funding, Timelines, delegation of authority, appeals, strengthen GMA/SMA integration
15-Nov-94	Jennifer Grathwol Thomas		Seattle Audubon Society	Majority of recommendations in draft 4 are not favorable to maintaining existing environmental protection measures. Putting HPA approval in the hands of local government will result in direct habitat loss. Under no circumstances should shorelines issues become the jurisdiction of Growth management Hearings Boards.
14-Nov-94	Thomas C. Harman		Beaver Lake Community Club	Do not give big developers a license to steal. Oppose cost of opposing party's attorneys fees. Environmental Impact Statements required by King County are too large and need to be cut down to a size understood by the citizens and decision makers. Remember what happened when regulations were lifted in the Savings and Loan Industry.
14-Nov-94	Michael Isensee		concerned citizen	Do not weaken environmental protection. Much of what is being proposed will weaken existing environmental standards for safe.
14-Nov-94	Morgan Bradley		concerned citizen	Number of changes proposed are contrary to attaining a best effort. Citizen review is the most critical element of the SEPA process any effort to restrict this element is scientifically unfounded. regional criteria should be included in the decision making process, federal

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14-Nov-94	Ann Aagaard		League of Women Voters	standards cannot be arbitrarily chosen as a cap. Support changes which allow appeals of shoreline master/programs to the GPHB by citizens, allow appeal of exemption decisions, and brief adjudication process for less complicated permit appeals to the SHB
14-Nov-94	Robert Dreyfuss		concerned citizen	Concerned that the task force is trying to water down SEPA and to expedite development permitting and reduce public interference.
14-Nov-94	John H. Darnall		WABO	Not convinced that the recommendations in their current form will result in achievement of the objectives outlined and recommend the Task Force consider more specific identification of causes leading to the recommendations. Recommendations seem to have been formulated under the premise that privatization of plan review services currently administered by cities and counties may be an element in shortening permit application processing timelines and improve consistency in code applications. Privatizing an entire regulatory function such as plan review, raises many concerns. Obtaining a building permit today involves far more than basic land use and life safety issues.
14-Nov-94	Sandra Adams		concerned citizen for Kitsap county	Do not incorporate SEPA and SMA into GMA.
14-Nov-94	Jon Titus & Priscilla Stanford		concerned citizen	Keep SEPA Do not weaken protection of environment for quick short term profits
14-Nov-94	Karin Engstrom James		concerned citizen	To eliminate the SEPA process for site specific proposals may result in burdensome cleanup costs to the taxpayer.
10-Nov-94	Jim Street & Paul Cyr		Puget Sound Regional Council	We should commit to a plan for integrating SEPA and SMA with the GMA that is carefully monitored to ensure an improved and streamlined process. SEPA- we support: IIA, IIE, IIB, IIC, IIA, IIB, IIC, IIID, IVA, IVB. See detailed report for full recommendations.
14-Nov-94	Rodd Pemble		concerned citizen	Concerns: enforcement, citizen participation, red tape, SEPA vs. GMA, changes for reviewing projects, be consistent, shorelines management-protect the marine and riparian ecosystems, applaud careful use of market based incentives but be cautious.
11-Nov-94	Sierra Club		WA ST conservation Office	Concern that a number of recommendations put forward will undermine environmental goals. Maximizing voluntary compliance, technical assistance before enforcement, delegate to Washington performance Partnership or OFM, certification of professionals
8-Nov-94	Charles R. Kendall, Jr.		Peregree	Recommend that a flow chart similar to the Critical Path Method be

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				used on how laws, rules, regulations, might be developed and revised. concerned with lack of coordination between judiciary and the legislature, can a public citizen get JARRC to review a agency rule, can JARRC review municipal ordinances, we need to reduce the number of laws.
8-Nov-94	Mayor Norm Rice		Mayor of Seattle	Enhance customer service, create high performance organizations, and develop clear legislative intent.
8-Nov-94	Agnes A. Zach		Clark County Home Builders Assoc	Support efforts to combine SEPA and land use regulation to reduce duplication and streamline process. Improve permitting process for local and state projects
8-Nov-94	Bill Sherman		Building Industry Assoc of WA	Task force should go further in curbing agency's excesses by eliminating their broad grants of rule making authority. Re: lead exposure rules.
8-Nov-94	Rita Bailie		Rainer Audubon	Keep SEPA, enforcement costs should be the responsibility of developers, citizens should be given early notice of applications and project approvals, we want task force consensus on the legislative language before their report is publicly released to guard against the legislature tampering with it.
6-Nov-94	Mike & Kathy Piel		concerned citizens	Keep SEPA, support streamlining permit process if there are biologically-based regional criteria to ensure environmental protection. Enforcement must be vigorous, costs for review must not be shifted from developers to local governments, no federal standards cap.
4-Nov-94	J. R. Aramburu, J. Eustis		Attorney at law	Public participation in the formulation of recommendations fall short of standards for Task Force, Task Force has strayed from its original mission, sounds like a wish list directly from land development industry. We hope final report can correct imbalances.
4-Nov-94	Ted Slatten		Tesla Enterprises	Many regulations written from within Ecology are ill-conceived and poorly researched. Support input provided by IBA and AWB.
4-Nov-94	Carol Dansereau		Washington Toxics Coalition	Strong concern regarding education before enforcement, the Task Force must be able to document that the changes do fix real problems and do not reduce environmental protection, what does task force mean by "items inconsistent with federal programs are inoperative"
3-Nov-94	Terry Connolly	Vancouver	Clark County Association of Realtors	Upfront, integrated land use planning and environmental review, assuring funding for this type of planning and local control and critical area standards is essential. In favor of GMA. strongly oppose an increase in the state or local real estate excise tax.

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3-Nov-94	Jan Baldwin	Vancouver	Rural Clark County Preservation	SEPA regulations will continue but have serious concerns of it under GMA. Do not abolish the current SEPA protections. Environmental review costs should not be seen as subsidy for developers at the public expense. The public should not have to pay for what someone else is proposing. Task Force recommendations seem to favor project applicants over the public. Most sinister recommendation is that reasonable attorney fees be awarded to the prevailing party after second or subsequent appeal of a local government permit decision.
3-Nov-94	Jim Keithley	Vancouver	Crown Plating	Regulatory Reform will only come about if you strengthen JARRC. Their decisions should carry weight. One example is the smoking issue. The regulatory agencies should not have all the power to walk into a business and tell them what they must do without proving that it is necessary - not just in case it might be necessary. Business cannot continue to expend resources and also give cost of living raises, etc.
3-Nov-94	John Karpinski	Vancouver		Submitted a full report to the task force on the recommendations. We need SEPA. GMA will not solve all our problems.
3-Nov-94	James L. Olmsted	Vancouver	Attorney At Law	The current recommendations will result in a severe reduction in state level environmental protection in Washington
3-Nov-94	Daniel Byrne	Seattle	Byrne S Gases	Frustrated in the regulations that affected his siting his business in the Seattle area.
3-Nov-94	Belinda Pearson	Seattle	League of Women Voters of Lake WA	Supports: improved public participation in comprehensive land-use planning, local governments funding, Opposes: shift costs to taxpayer, planning under GMA substituted for SEPA review.
3-Nov-94	Ann Aagaard	Seattle	League of Women Voters	The October 4, 1994 draft recommendations under the guise of streamlining processes will in fact severely impact the balance that is inherent in the act between the local adoption and issuance of shoreline permits and state oversight in reviewing and adopting master programs as part of the state administrative code.
3-Nov-94	Charlie Dotson	Spokane	Planning Director	Memo sent to TF earlier this year. Planning directors admire the directions the TF is taking toward regulatory reform. We look for a comment for a longterm goal of regulatory reform. This can be a win/win situation. Find a financial mechanism that allows under taking the detailed environmental evaluation during comprehensive planning activities. Local governments do not now have the funds.
3-Nov-94	Bonnie Mager	Spokane	Washington Environmental Council	To eliminate SEPA at this point is not a good idea, that GMA has not been adopted in a majority of jurisdictions at this point and unclear

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				how protective of the environment that GMA will be. Important to have good environmental track record before addressing the red tape. WEC for example would be in support of Reg. reform that is biologically based on Regional criteria with the objects the criteria being biological sustainable protection for public resources priority habitats and species while minimizing the permit cost and time. The recommendation on enforcement that must be given a higher priority, that repeat violators must be penalized to ensure that people who obey the law will not be placed at a competitive disadvantage or suffer damage. In regards to the HPAC delegating to local governments we feel this could pose a serious threat to counties where there is a lack of resources or a desire to adequately protect the environment. As far as the recommendation that prevailing party be awarded reasonable attorney's fees on appeal to the court of appeals, we feel that would surely have a chilling effect on the citizens groups and would stifle public participation in the land use decisions. Not in favor of modification of the process for lifting a stay on development.
3-Nov-94	Chris Lehman	Seattle	Neighborhood groups	Neighborhoods are directly impacted by all kinds of regulatory issues. The value of the neighborhood and their rights to participate is fundamental to issues related to growth in this state. Do not sweep away citizens rights.
3-Nov-94	Gary Smith	Seattle	IBA	Small business community concerns: example a small auto repair shop has 58 sets of regulations from 28 different state and local agencies. No one in state government knows all these regulations but the small businessman is expected to. The burden of complying with the regulations is taking away from the daily work hours of a small business. Please make regulatory reform a real fact of life in Washington. See submitted report for full details.
3-Nov-94	Nancy Bugley	Seattle	concerned citizen	Concerned that regulatory reform not be used as a cover to gut those regulations that protect the environment, health and safety of people in Washington. Don't use the GMA as a substitute for environmental review at the project level. Opposed to using Federal Standards as a cap.
3-Nov-94	Larry Hampson	Spokane	Sierra Club	Local control is very effective - keep it that way.
3-Nov-94	Pearl Agard		Robt Agard Construction Inc.	Support education before enforcement, pilot rule concept is great, using certified experts and bonding in lieu of government planners is

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3-Nov-94	Jay Ham, Kathryn Alexandra		concerned citizens	logical and cost saving Keep SEPA for project-level review. Costs for environmental review must not be shifted from developers to the local governments, should be no federal standards cap. Keep SMA and SHB
2-Nov-94	James L. Olmsted		Attorney At Law	Concerned if TF is successful in selling its recommendations the ultimate result will be a severe reduction in state level environmental protections in Washington
2-Nov-94	Charles R. Kendall, Jr.		Perigee, Inc.	Copy of court Appeals document, noting the city of Tacoma's error in not following the Rules of Appellate procedure correctly, City of Tacoma want Perigee motion denied because it was not timely filed (when it really was) yet the City of Tacoma itself did not timely file its own response to this motion.
1-Nov-94	Jim Street	Tacoma	Seattle City Council	Consolidate local land use decisions, quality PEISs must be sufficiently funded, SEPA authority to development regulations should be standardized by statute, mandatory timelines for permits, what is the effort on local government when a GMHB decides a plan is not in compliance, professional certification, shoreline appeals process should be reduced.
1-Nov-94	Cliff Finch	Tacoma	Association of Washington Business	Moore survey responses indicated that none of the six state agencies listed were responsive to businesses. Recommendations do very little to reduce regulatory burden on business. Missing is requirement on agencies to evaluate new and existing rules of significant impact under specific criteria to determine if rule is necessary and cost-effective. Missing is the equal access to justice provision. See letter for details.
1-Nov-94	Miriam Graves	Tacoma	The League of Women Voters of WA	Look at detailed analysis submitted. Do not agree that GMA eliminate the need for sepa review at the project level. Have task force continue the process as it unfolds in legislative fine tuning.
1-Nov-94	Naki Stevens	Tacoma	People for Puget Sound	Principal concerns: SEPA/GMA integration, potential payment of attorney costs, regional criteria and critical area legislative guidance, state coordination of permitting. See detailed written input. Enforcement is critical issue. Education before enforcement undermines Ecology's ability to regulate and administrate. Pulling people off of enforcement and putting them on technical assistance does not add up. Look at proposal for enforcement.
1-Nov-94	Steve Clagett	Tacoma	1000 Friends of Washington	Subarea planning document distributed with TF and financing. Include in TF recommendation strong language define what

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				comprises subarea planning, what the standards for environment review will be, and how it will be financed. Feels that in draft 4 he is being asked to take on faith that something's being done at the sepa project level can be done elsewhere but does not know the how! Support single state agency watching over the process. Need state or regional standards. We can come up with some ranges to eliminate a lot of uncertainty. do not support attorneys fees would be assessed on a party that did not prevail on appeal.
1-Nov-94	Anne Robison		concerned citizen	Do not weaken the state environmental policy act, legislative language by reached by consensus by the TF to reduce possibility of changes during the legislative process
1-Nov-94	Bertha Wilson	Tacoma		Pilot rule concept, purchasing administration fee, 1.9 percent fee, B&O taxes, tired of hassle for tax fees.
1-Nov-94	Debby Hyde	Tacoma	President of Planning Directors Association and Regional Planning	Planning directors support the process that affords any real change. Make modifications to revolving fund does not afford enough opportunity, timelines for local government language speaks to maximum time - change for maximum time for reviewing, recognize there are different sizes in cities and county and timelines should be different for those size differences, Look at standardization be incorporation in future gma updates. Shorelines - concern of having two different authorities, please identify who is in charge
1-Nov-94	Richard Brown	Tacoma	WA Assoc of Realtors, SEPA/GMA workgroup	Supports concept of comprehensive and detailed environmental review at the earliest possible time in planning, Legislature should establish a state revolving loan fund wish local governments could borrow, oppose any increase in state or local real estate excise taxes, oppose developing specific critical standards on a statewide basis by either agency rule or technical panel.
1-Nov-94	Alan Copsey	Tacoma	Seattle Audobon Society	While programmatic review is developing what do we do in the interim, Once it is there seems to be still a problem that amounts to a categorical exemption from SEPA. Do not merge SEPA and GMA at expense of protections. What if local governments are not able to do what you expect? Funding is paramount.
1-Nov-94	Judy Turpin	Tacoma		Concerned that the summary distributed to the public distorts the relationship of project approvals and SEPA makes it look like an assumption that the development regulations are adequate. Draft four is very confusing the SEPA/GMA work group did a better job. 180 day time period seems fair. A thorough review of the Shorelines

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1-Nov-94	Curt Anderson	Tacoma		has not be done and suggest you stop with what is in bold and leave the other for another day. Troubled by AA recommendation 2.
1-Nov-94	Eleanore Baxendale	Tacoma		No one seems to care about the small business man. Have pilot rule to determine what is the real problem. Find out what the cost impact truly is. Need professional certification. Energy codes have many conflicts. Methodical to determine the prevailing wage does not match the market wage. Cost of state to review the many documents is to burdensome. Slow down on rules and regulations. Ron Judd requested a submittal of the codes in conflict.
1-Nov-94	Heather Ballash	Tacoma	Tacoma Audobon society	Environmental review for projects and funding for environmental plans both are inconsistent. Urge looking at tax increment financing. Do environmental review early in the process. Funding by legislature should be 50 million over 5 years or 10 million over next biennium. Public participation is overlong and discourages participation. SEPA is the best tool for public participation. Do not take it away.
1-Nov-94	Nell Barker	Tacoma		Make regulations simpler and fewer but make them ore protective for the environment. Keep SEPA. In Pierce county the water quality is deteriorating. Require developers to take classes and pass a test before being allowed to do drastic rearranging of the landscape.
1-Nov-94	Phil Miller	Tacoma	Dept of Ecology	Generally supports the recommendations and will continue to work with the task force.
1-Nov-94	Tom Mark	Tacoma	Dept of Ecology	Concern in the shoreline management area. Policy part is easy in SEPA and SMA but procedural and definition issues are difficult. Shorelines are a special resource to the people of Washington State. Local permitting process and shorelines hearing board compromises protections.
1-Nov-94	Bruce Wishart	Tacoma	Sierra Club	Alternative approaches - enforcement is a tool to get to compliance. Shift from enforcement effort is undermining compliance. Concern that we are shifting enforcement personnel out into technical assistance staffing. Criteria of willful violation is almost impossible to prove. Does approve the shop sweep program.
1-Nov-94	Pam Johnson	Tacoma	People for Puget Sound	Keep project level SEPA review, federal standards cap - ridiculous to deny state or local government the power to exceed federal standards for environmental protection. Do not switch the cost from developers to local governments.
1-Nov-94	Eileen Fox	Tacoma	from pierce county	Appears that we would like to believe that municipalities want to follow the law. Urge task force to not remove the opportunity to get

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1-Nov-94	Jennifer Thomas	Tacoma	WETNET	the public into the process. Recommendations in draft 4 are ambiguous and unclear. Do not support IIA and IIB
1-Nov-94	Dan Cantrell	Tacoma	WA Environmental Council	Environmental groups are not uncaring to the small businesses. They understand business rules and regulations. SEPA land use reform recommendation II - what kind of recommendation will the tf make sure that the review in mitigation is adequate, Section 7, no funding it can be a fundamental that it will not work, can local authorities handle delegation of HPAs, beyond the tf an another group monitors these recommendations - this is essential.
1-Nov-94	Josh Baldi	Tacoma	concerned citizen	Do not remove SEPA project level review, consider enforcement more so than technical assistance, HPA approval he has concerns about. Habitat would suffer.
1-Nov-94	Monique Wallis	Tacoma	concerned citizen	Need to be able to address individual process, do not give it a broad brush stroke.
1-Nov-94	Tom Morte	Tacoma	Private homeowners association	Broadbrush process is difficult. Advocates for SEPA.
1-Nov-94	Mike Sanderson	Tacoma	Master Bldg Assn, Pierce Co.	Draft does not go far enough. Agencies need to develop specific criteria when they adopt new rules that negatively impact small businesses. Do not believe that the legislature intended to delegate broadgrant of rule making to agencies. Example: Dept of Health and the State Board of Health recently adopted erroneous state wide on site septic regulations without basing the requirement on sound scientific data. They have demonstrated a high level of arrogance.
1-Nov-94	Krista Eichler	Tacoma	Seattle Chamber of Commerce	CEO of Godfather pizza said that of the 40 states that godfathers has stores only California presented more burdensome challenges than Washington state. Regulation is out of control. the long line of costs, delays and permits is getting in the way of WA States prosperity. (NO RESPONSE TO TF REQUEST TO BUSINESS COMMUNITY TO OUTLINE RULES THAT ARE MOST BURDENSOME)
1-Nov-94	Carol Dansereau	Tacoma	WA Toxics Coalition	At stake is the protection of people and the environment from further contamination. It is the responsibility of the tf to support all changes with through analysis and documentation. Should note that 39 percent of compliance recommendations were not complied with. Pollution prevention is happening because of regulation. See study by INFORM.
1-Nov-94	Steve Hallstrom	Tacoma	Audubon Society	Inconsistencies between jurisdictions causes many problems, difficult to get the private citizens comments taken seriously by the planners

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1-Nov-94	Maryanne Tagney Jones	Tacoma	WENPAC	<p>in departments when they have all these experts and you are just a citizen. Allow citizens access to tools and technology and information in a meaningful way. What defines when the regulatory regulations are adequate to replace SEPA. Consider licensing the developers and when they violate the regulations then revoke their license and make them pay extremely high mitigation fees.</p> <p>Re Mayor Tim Douglas's remark that SEPA has not done such a good job yet so many are defending it. One of the reasons is that does not is that we are reluctant to use a tool under SEPA - denial - it is extremely rare. It give an atmosphere of false chose being made to us, we can chose between this mitigation and that mitigation and we will be able to build what we want and still have environmental protection. We are kidding ourselves. Reason for not using denial under SEPA is political. Do not put the technical into the political area.</p>
31-Oct-94	Frederick E. Ellis		concerned citizen	SEPA must be kept intact, support simplifying permit process but ensure environmental protection, costs of review must be born by developers and not local government, the Task Force is intruding on legislation which it should leave along - Shoreline Management Act and Shorelines Hearing Board.
31-Oct-94	Mary Roberts		Cooperative Extension King Co./WSU	Protect human and ecological health and ensure regulatory efficiency, leave Shoreline Management Act and Hearings Board alone, preserve citizens rights to appeal land use decisions.
31-Oct-94	Valerie J. Fisher		concerned citizen	Keep SEPA, citizen's opportunity to appeal land use decisions are a democratic right, not a burden on developers, no federal standards cap, do not weaken shoreline management act.
31-Oct-94	Gordon D. Kinder III		concerned citizen	GTF is using procedural reforms as a guise for eviscerating current regulations intended to afford environmental protection. GTF proposals should elicit consensus support from the legislature before being presented to the public at large.
31-Oct-94	Elsa M. Bruton			
28-Oct-94	Carolee Colter		concerned citizen	Costs of environmental review should not be shifted form developers to tax payers, keep the state environmental policy act, keep the shorelines management act, keep democracy in the review process
25-Oct-94	Bob Bader	Yakima		
25-Oct-94	Michael Gempeler	Yakima	WA Growers League	Sees a lot of frustration in a lack of true sensitivity to the affordability issues. The small business impact process is no more

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				than going through the motions. Seems that so much of the decision process is through before the impact statements are finished. Believes that the legislators have a lack of understanding of the accumulative effect of a large number of regulations.
25-Oct-94	Joan Fluaith	Yakima	Small trust company owner	Having inspections problems with L&I. Hit with fines recently that they have never been charged with before. Penalizing the business when the employee does not comply with what they are told to do seems unfair. Please use education before coming in with penalties.
25-Oct-94	Pat Rasmussen	Yakima	Levenworth Comprehensive Plan	Concern about limiting the time for public response or appeal.
25-Oct-94	Robert Jensen	Lacey	Environmental Hearings Office	Letter submitted. Shorelines hearing board concerns. Must continue to protect our fragile shorelines. Do not limit the shoreline hearing board to 120 days - the quality of decisions would suffer.
25-Oct-94	Rep. Clyde Ballard	Wenatchee	House Representative District 12	Expressed concern about agencies exceeding their authority in adopting rules.
25-Oct-94	Jim Lynch	Wenatchee		Needs to be an oversight for both the Shorelines Act and Growth Management Act. Give state agencies some input into the process and to do an oversight on the hearings matter. Delays usually come not from the process but from the participants putting it there.
25-Oct-94	Frank DeLong	Wenatchee	WA State Horticultural Association	Major concern is regulations related to worker safety. Give us regulations that address a real identified problem, are compleable, and are affordable. Then enforce those with regulations with certainty you will get voluntary compliance from the majority but also get help in nailing the real problem which is the handful of repeat offenders.
25-Oct-94	Elsa M. Bruton		concerned citizen	Make enforcement consistent and rigorous, retain SEPA review at the project level, need performance standards, developers not taxpayers must bear the costs of environmental review, we must not be limited by federal standard caps that are ill adapted to our region, more protection for fish and wildlife and more protection for taxpayers.
25-Oct-94	Buell Hawkins	Wenatchee	Farm Equipment Dealership	Reduce paperwork. When we have to spend time filling out paperwork we are taking away from staff time in running our business. The Department of Ecology paperwork for annual dangerous waste reports requires most times 2 to 3 sets of separate reports to track the same 55 gallon drum of solvent. Spokane Department of Ecology office told him that they do not have access to the database in Olympia so they also request him to fill out duplicate forms.
25-Oct-94			Roofing Contractors Assoc. of WA	

Written and Oral Comments Submitted During the Public Hearing Process

Date	Name	Public Hearing	Company	Summary Comments
24-Oct-94	Donald R. Chance		Association of Washington Business	Detailed considerations, see letter. Believes full integration can only be achieved with the design of a new statewide high performance land use system. Strongly oppose development of more specific critical area standards on a statewide basis through either agency rule adoption or a technical panel approach
25-Oct-94	Kenneth Nelson	Yakima	Washington Association of Realtors	Supports concept of comprehensive and detailed environmental review at earliest time. Legislature should establish a state revolving loan fund which local governments can borrow from, oppose any increase in Reet, recommend legislature adopt more specific goals and policies for GMA.
21-Oct-94	Robert S. Derrick		King Co. Dept. of Development & Environmental Services	Support: GMA funding for planning & environmental analysis, coordination of state and local regulatory permitting, integration of development regulations into GMA, and consolidation of SEPA appeals with the hearing on the permit would go a long way toward expediting permit review. See detailed report for issues needing further analysis.
7-Aug-94	Mary Christina Wood		concerned citizen	Land use and planning in Clark County is dysfunctional and ineffectual in preventing harm to the community resources and way of life.

Appendix E

1. Maximizing Voluntary Compliance

1 AN ACT Relating to voluntary compliance with agency rules
2 consistent with the recommendations of the governor's task force on
3 regulatory reform; amending RCW 18.104.155, 49.17.180, 70.94.431,
4 70.105.080, 70.132.050, 70.138.040, 86.16.081, 90.03.600, 90.48.144,
5 90.58.210, 90.58.560, and 90.76.080; adding a new chapter to Title 43
6 RCW; and creating new sections.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 NEW SECTION. Sec. 1. The legislature finds that, due to the
9 volume and complexity of laws and rules it is appropriate for
10 regulatory agencies to adopt programs and policies that encourage
11 voluntary compliance by those affected by specific rules. The
12 legislature recognizes that a cooperative partnership between agencies
13 and regulated parties that emphasizes education and assistance before
14 the imposition of penalties will achieve greater compliance with laws
15 and rules and that most individuals and businesses who are subject to
16 regulation will attempt to comply with the law, particularly if they
17 are given sufficient information. In this context, enforcement should
18 assure that the majority of a regulated community that complies with
19 the law are not placed at a competitive disadvantage and that a

1 continuing failure to comply that is within the control of a party who
2 has received technical assistance is considered by an agency when it
3 determines the amount of any civil penalty that is issued.

4 NEW SECTION. Sec. 2. Unless the context clearly requires
5 otherwise, the definitions in this section apply throughout this
6 chapter.

7 (1) "Civil penalty" means a monetary penalty administratively
8 issued by a regulatory agency for noncompliance with state or federal
9 law or rules. The term does not include any criminal penalty, damage
10 assessments, wages, premiums, or taxes owed, or interest or late fees
11 on any existing obligation.

12 (2) "Regulatory agency" means an agency as defined in RCW 34.05.010
13 that has the authority to issue civil penalties. The term does not
14 include the state patrol or any institution of higher education as
15 defined in RCW 28B.10.016.

16 (3) "Technical assistance" includes:

17 (a) Information on the laws, rules, and compliance methods and
18 technologies applicable to the regulatory agency's programs;

19 (b) Information on methods to avoid compliance problems;

20 (c) Assistance in applying for permits; and

21 (d) Information on the mission, goals, and objectives of the
22 program.

23 NEW SECTION. Sec. 3. All regulatory agencies shall develop
24 programs to encourage voluntary compliance by providing technical
25 assistance consistent with statutory requirements and the limits of the
26 agency's budget. The programs shall include but are not limited to
27 technical assistance visits.

28 NEW SECTION. Sec. 4. (1) For the purposes of this chapter, a
29 technical assistance visit is a visit by a regulatory agency to a
30 facility, business, or other location that:

31 (a) Has been requested or is voluntarily accepted; and

32 (b) Is declared by the regulatory agency at the beginning of the
33 visit to be a technical assistance visit.

34 (2) A technical assistance visit also includes a consultative visit
35 pursuant to RCW 49.17.250.

1 (3) During a technical assistance visit, or within a reasonable
2 time thereafter, a regulatory agency shall inform the owner or operator
3 of the facility of any violations of law or agency rules identified by
4 the agency and provide technical assistance concerning compliance.

5 NEW SECTION. Sec. 5. The owner and operator shall be given a
6 reasonable period of time to correct violations identified during a
7 technical assistance visit before any civil penalty provided for by law
8 is imposed for those violations. A regulatory agency may revisit a
9 facility, business, or other location after a technical assistance
10 visit and a reasonable period of time has passed to correct violations
11 identified by the agency in writing and issue civil penalties as
12 provided for by law for any uncorrected violations.

13 NEW SECTION. Sec. 6. A regulatory agency that observes a
14 violation during a technical assistance visit may issue a civil penalty
15 as provided for by law if: (1) The individual or business has
16 previously been subject to an enforcement action for the same or
17 similar type of violation of the same statute or rule or has been given
18 previous notice of the same or similar type of violation of the same
19 statute or rule; or (2) the issue involves sales taxes due to the state
20 and the individual or business is not remitting previously collected
21 sales taxes to the state; or (3) the violation has a probability of
22 placing a person in danger of death or bodily harm, has a probability
23 of causing more than minor environmental harm, or has a probability of
24 causing physical damage to the property of another in an amount
25 exceeding one thousand dollars.

26 NEW SECTION. Sec. 7. (1) If in the course of any site inspection
27 or visit that is not a technical assistance visit, the department of
28 ecology becomes aware of conditions that are not in compliance with
29 applicable laws and rules enforced by the department and are not
30 subject to civil penalties as provided for in section 8 of this act,
31 the department may issue a notice of correction to the responsible
32 party that shall include:

33 (a) A description of the condition that is not in compliance and a
34 specific citation to the applicable law or rule;

35 (b) A statement of what is required to achieve compliance;

1 (c) The date by which the department requires compliance to be
2 achieved;

3 (d) Notice of the means to contact any technical assistance
4 services provided by the department or others; and

5 (e) Notice of when, where, and to whom a request to extend the time
6 to achieve compliance for good cause may be filed with the department.

7 (2) A notice of correction is not a formal enforcement action, is
8 not subject to appeal, and is a public record.

9 (3) If the department issues a notice of correction, it shall not
10 issue a civil penalty for the violations identified in the notice of
11 correction unless the responsible party fails to comply with the
12 notice.

13 NEW SECTION. Sec. 8. The department of ecology may issue a civil
14 penalty provided for by law without first issuing a notice of
15 correction if: (1) The person has previously been subject to an
16 enforcement action for the same or similar type of violation of the
17 same statute or rule or has been given previous notice of the same or
18 similar type of violation of the same statute or rule; or (2)
19 compliance is not achieved by the date established by the department in
20 a previously issued notice of correction, if the department has
21 responded to any request for review of such date by reaffirming the
22 original date or establishing a new date; or (3) the violation has a
23 probability of placing a person in danger of death or bodily harm, has
24 a probability of causing more than minor environmental harm, or has a
25 probability of causing physical damage to the property of another in an
26 amount exceeding one thousand dollars.

27 NEW SECTION. Sec. 9. The provisions of sections 7 and 8 of this
28 act affecting civil penalties issued by the department of ecology shall
29 not apply to civil penalties for negligent discharge of oil as
30 authorized under RCW 90.56.330 or to civil penalties as authorized
31 under RCW 90.03.600 for unlawful use of water in violation of RCW
32 90.03.250 or 90.44.050.

33 NEW SECTION. Sec. 10. (1) Following a consultative visit pursuant
34 to RCW 49.17.250, the department of labor and industries shall issue a
35 report to the employer that the employer shall make available to its
36 employees. The report shall contain:

1 (a) A description of the condition that is not in compliance and a
2 specific citation to the applicable law or rule;

3 (b) A statement of what is required to achieve compliance;

4 (c) The date by which the department requires compliance to be
5 achieved;

6 (d) Notice of means to contact technical assistance services
7 provided by the department; and

8 (e) Notice of when, where, and to whom a request to extend the time
9 to achieve compliance for good cause may be filed with the department.

10 (2) Following a compliance inspection pursuant to RCW 49.17.120,
11 the department of labor and industries shall issue a citation for
12 violations of industrial safety and health standards. The citation
13 shall not assess a penalty if the violations:

14 (a) Are determined not to be of a serious nature;

15 (b) Have not been previously cited;

16 (c) Are not willful; and

17 (d) Do not have a mandatory penalty under chapter 49.17 RCW.

18 NEW SECTION. Sec. 11. The date for compliance established by the
19 department of ecology or the department of labor and industries
20 pursuant to section 7 or 10 of this act respectively shall provide for
21 a reasonable time to achieve compliance. Any person receiving a notice
22 of correction pursuant to section 7 of this act or a report or citation
23 pursuant to section 10 of this act may request an extension of time to
24 achieve compliance for good cause from the issuing department.
25 Requests shall be submitted to the issuing department and responded to
26 by the issuing department in writing in accordance with procedures
27 specified by the issuing department in the notice, report, or citation.

28 NEW SECTION. Sec. 12. The departments of revenue and labor and
29 industries and the employment security department shall undertake an
30 educational program directed at those who have the most difficulty in
31 determining their tax or premium liability. The departments may rely
32 on information from internal data, trade associations, and businesses
33 to determine which entities should be selected. The educational
34 programs may include, but not be limited to, targeted informational
35 fact sheets, self-audits, or workshops, and may be presented
36 individually by the agency or in conjunction with other agencies.

1 NEW SECTION. Sec. 13. The department of revenue, the department
2 of labor and industries in respect to its duties in Title 51 RCW, and
3 the employment security department shall develop and administer a pilot
4 voluntary audit program. Voluntary audits can be requested by
5 businesses from any of these agencies according to guidelines
6 established by each agency. No penalty assessments may be made against
7 participants in such a program except when the agency determines that
8 either a good faith effort has not been made by the taxpayer or premium
9 payer to comply with the law or that the taxpayer has failed to remit
10 previously collected sales taxes to the state. The persons conducting
11 the voluntary audit shall provide the business undergoing the voluntary
12 audit an audit report that describes errors or omissions found and
13 future reporting instructions. This program does not relieve a
14 business from past or future tax or premium obligations.

15 NEW SECTION. Sec. 14. The departments of revenue and labor and
16 industries and the employment security department shall each review the
17 penalties it issues related to taxes or premiums to determine if they
18 are consistent and provide for waivers in appropriate circumstances.
19 Each department shall report the results of its review to the
20 legislature no later than December 1, 1995.

21 NEW SECTION. Sec. 15. Nothing in this chapter obligates a
22 regulatory agency to conduct a technical assistance visit. The state
23 and officers or employees of the state shall not be liable for damages
24 to a person to the extent that liability is asserted to arise from
25 providing technical assistance, or if liability is asserted to arise
26 from the failure of the state or officers or employees of the state to
27 provide technical assistance. This chapter does not limit the
28 authority of any regulatory agency to take any enforcement action,
29 other than a civil penalty, authorized by law. This chapter shall not
30 limit a regulatory agency's authority to issue a civil penalty as
31 authorized by law based upon a person's failure to comply with specific
32 terms and conditions of any permit or license issued by the agency to
33 that person.

34 NEW SECTION. Sec. 16. Agency rules, guidelines, and procedures
35 necessary to implement this act shall be established and implemented
36 expeditiously and not later than July 1, 1996.

1 NEW SECTION. Sec. 17. If a regulatory agency determines any part
2 of this chapter to be in conflict with federal law or program
3 requirements, in conflict with federal requirements that are a
4 prescribed condition to the allocation of federal funds to the state,
5 or in conflict with the requirements for eligibility of employers in
6 this state for federal unemployment tax credits, the conflicting part
7 of this chapter shall be inoperative solely to the extent of the
8 conflict. Any rules under this chapter shall meet federal requirements
9 that are a necessary condition to the receipt of federal funds by the
10 state or the granting of federal unemployment tax credits to employers
11 in this state.

12 NEW SECTION. Sec. 18. If notified by responsible federal
13 officials of any conflict of this chapter with federal law or program
14 requirements or with federal requirements that are a prescribed
15 condition to the allocation of federal funds to the state, the
16 regulatory agency notified of the conflict shall actively seek to
17 resolve the conflict. If the agency determines that the conflict
18 cannot be resolved without loss of benefits or authority to the state,
19 the agency shall notify the governor, the president of the senate, and
20 the speaker of the house of representatives in writing within thirty
21 days of making that determination.

22 NEW SECTION. Sec. 19. If any provision of this act or its
23 application to any person or circumstance is held invalid, the
24 remainder of the act or the application of the provision to other
25 persons or circumstances is not affected.

26 NEW SECTION. Sec. 20. (1) By January 31, 1996, and by January
27 31st of each even-numbered year thereafter, the office of financial
28 management, after consulting with state regulatory agencies, and
29 business, labor, and environmental organizations, shall report to the
30 governor and the legislature regarding the effects of this chapter on
31 the regulatory system in this state. The report shall document:

32 (a) Technical assistance, including but not limited to technical
33 assistance visits, provided by state regulatory agencies consistent
34 with this chapter;

35 (b) Any rules adopted, guidelines developed, or training conducted
36 to implement this chapter;

1 (c) Any changes in the appropriation, allocation, or expenditure of
2 regulatory agency resources to implement this chapter;

3 (d) Any legal action against state regulatory agencies for any
4 alleged failure to comply with this chapter, the costs to the state of
5 the action, and the result;

6 (e) The extent to which this chapter has resulted in either an
7 increase or decrease in regulatory agency use of civil penalties;

8 (f) The extent to which this chapter has contributed to any change
9 in voluntary compliance with state statutes or rules;

10 (g) The extent to which this chapter has improved the acceptability
11 or effectiveness of state regulatory procedures; and

12 (h) Any other information considered by the office of financial
13 management to be useful in evaluating the effect of this chapter.

14 (2) This section shall expire June 30, 2000.

15 Sec. 21. RCW 18.104.155 and 1993 c 387 s 21 are each amended to
16 read as follows:

17 (1) Except as provided in sections 7 through 9 of this act, the
18 department of ecology may assess a civil penalty for a violation of
19 this chapter or rules or orders of the department adopted or issued
20 pursuant to it.

21 (2) There shall be three categories of violations: Minor, serious,
22 and major.

23 (a) A minor violation is a violation that does not seriously
24 threaten public health, safety, and the environment. Minor violations
25 include, but are not limited to:

26 (i) Failure to submit completed start cards and well reports within
27 the required time;

28 (ii) Failure to submit variance requests before construction;

29 (iii) Failure to submit well construction fees;

30 (iv) Failure to place a well identification tag on a new well; and

31 (v) Minor or reparable construction problems.

32 (b) A serious violation is a violation that poses a critical or
33 serious threat to public health, safety, and the environment. Serious
34 violations include, but are not limited to:

35 (i) Improper well construction;

36 (ii) Intentional and improper location or siting of a well;

37 (iii) Construction of a well without a required permit;

38 (iv) Violation of decommissioning requirements;

1 (v) Repeated minor violations; or

2 (vi) Construction of a well by a person whose license has expired
3 or has been suspended for not more than ninety days.

4 (c) A major violation is the construction of a well by a person:

5 (i) Without a license; or

6 (ii) After the person's license has been suspended for more than
7 ninety days or revoked.

8 (3) (a) The penalty for a minor violation shall be not less than one
9 hundred dollars and not more than five hundred dollars. Before the
10 imposition of a penalty for a minor violation, the department may issue
11 an order of noncompliance to provide an opportunity for mitigation or
12 compliance.

13 (b) The penalty for a serious violation shall be not less than five
14 hundred dollars and not more than five thousand dollars.

15 (c) The penalty for a major violation shall be not less than five
16 thousand dollars and not more than ten thousand dollars.

17 (4) In determining the appropriate penalty under subsection (3) of
18 this section the department shall consider whether the person:

19 (a) Has demonstrated a general disregard for public health and
20 safety through the number and magnitude of the violations;

21 (b) Has demonstrated a disregard for the well construction laws or
22 rules in repeated or continuous violations; or

23 (c) Knew or reasonably should have known of circumstances that
24 resulted in the violation.

25 (5) Penalties provided for in this section shall be imposed
26 pursuant to RCW 43.21B.300. The department shall provide thirty days
27 written notice of a violation as provided in RCW 43.21B.300(3).

28 (6) For informational purposes, a copy of the notice of violation,
29 resulting from the improper construction of a well, that is sent to a
30 water well contractor or water well construction operator, shall also
31 be sent by the department to the well owner.

32 (7) Penalties collected by the department pursuant to this section
33 shall be deposited in the reclamation account established by chapter
34 89.16 RCW. Subject to legislative appropriation, the penalties may be
35 spent only for purposes related to the restoration and enhancement of
36 ground water resources in the state.

37 Sec. 22. RCW 49.17.180 and 1991 c 108 s 1 are each amended to read
38 as follows:

1 (1) Except as provided in section 10 of this act, any employer who
2 willfully or repeatedly violates the requirements of RCW 49.17.060, of
3 any safety or health standard promulgated under the authority of this
4 chapter, of any existing rule or regulation governing the conditions of
5 employment promulgated by the department, or of any order issued
6 granting a variance under RCW 49.17.080 or 49.17.090 may be assessed a
7 civil penalty not to exceed seventy thousand dollars for each
8 violation. A minimum penalty of five thousand dollars shall be
9 assessed for a willful violation.

10 (2) Any employer who has received a citation for a serious
11 violation of the requirements of RCW 49.17.060, of any safety or health
12 standard promulgated under the authority of this chapter, of any
13 existing rule or regulation governing the conditions of employment
14 promulgated by the department, or of any order issued granting a
15 variance under RCW 49.17.080 or 49.17.090 as determined in accordance
16 with subsection (6) of this section, shall be assessed a civil penalty
17 not to exceed seven thousand dollars for each such violation.

18 (3) Any employer who has received a citation for a violation of the
19 requirements of RCW 49.17.060, of any safety or health standard
20 promulgated under this chapter, of any existing rule or regulation
21 governing the conditions of employment promulgated by the department,
22 or of any order issued granting a variance under RCW 49.17.080 or
23 49.17.090, where such violation is specifically determined not to be of
24 a serious nature as provided in subsection (6) of this section, may be
25 assessed a civil penalty not to exceed seven thousand dollars for each
26 such violation, unless such violation is determined to be de minimis.

27 (4) Any employer who fails to correct a violation for which a
28 citation has been issued under RCW 49.17.120 or 49.17.130 within the
29 period permitted for its correction, which period shall not begin to
30 run until the date of the final order of the board of industrial
31 insurance appeals in the case of any review proceedings under this
32 chapter initiated by the employer in good faith and not solely for
33 delay or avoidance of penalties, may be assessed a civil penalty of not
34 more than seven thousand dollars for each day during which such failure
35 or violation continues.

36 (5) Any employer who violates any of the posting requirements of
37 this chapter, or any of the posting requirements of rules promulgated
38 by the department pursuant to this chapter related to employee or
39 employee representative's rights to notice, including but not limited

1 to those employee rights to notice set forth in RCW 49.17.080,
2 49.17.090, 49.17.120, 49.17.130, 49.17.220(1) and 49.17.240(2), shall
3 be assessed a penalty not to exceed seven thousand dollars for each
4 such violation. Any employer who violates any of the posting
5 requirements for the posting of informational, educational, or training
6 materials under the authority of RCW 49.17.050(7), may be assessed a
7 penalty not to exceed seven thousand dollars for each such violation.

8 (6) For the purposes of this section, a serious violation shall be
9 deemed to exist in a work place if there is a substantial probability
10 that death or serious physical harm could result from a condition which
11 exists, or from one or more practices, means, methods, operations, or
12 processes which have been adopted or are in use in such work place,
13 unless the employer did not, and could not with the exercise of
14 reasonable diligence, know of the presence of the violation.

15 (7) The director, or his authorized representatives, shall have
16 authority to assess all civil penalties provided in this section,
17 giving due consideration to the appropriateness of the penalty with
18 respect to the number of affected employees of the employer being
19 charged, the gravity of the violation, the size of the employer's
20 business, the good faith of the employer, and the history of previous
21 violations.

22 (8) Civil penalties imposed under this chapter shall be paid to the
23 director for deposit in the supplemental pension fund established by
24 RCW 51.44.033. Civil penalties may be recovered in a civil action in
25 the name of the department brought in the superior court of the county
26 where the violation is alleged to have occurred, or the department may
27 utilize the procedures for collection of civil penalties as set forth
28 in RCW 51.48.120 through 51.48.150.

29 Sec. 23. RCW 70.94.431 and 1991 c 199 s 311 are each amended to
30 read as follows:

31 (1) Except as provided in sections 7 through 9 of this act, and in
32 addition to or as an alternate to any other penalty provided by law,
33 any person who violates any of the provisions of chapter 70.94 RCW,
34 chapter 70.120 RCW, or any of the rules in force under such chapters
35 may incur a civil penalty in an amount not to exceed ten thousand
36 dollars per day for each violation. Each such violation shall be a
37 separate and distinct offense, and in case of a continuing violation,
38 each day's continuance shall be a separate and distinct violation.

1 Any person who fails to take action as specified by an order issued
2 pursuant to this chapter shall be liable for a civil penalty of not
3 more than ten thousand dollars for each day of continued noncompliance.

4 (2) Penalties incurred but not paid shall accrue interest,
5 beginning on the ninety-first day following the date that the penalty
6 becomes due and payable, at the highest rate allowed by RCW 19.52.020
7 on the date that the penalty becomes due and payable. If violations or
8 penalties are appealed, interest shall not begin to accrue until the
9 thirty-first day following final resolution of the appeal.

10 The maximum penalty amounts established in this section may be
11 increased annually to account for inflation as determined by the state
12 office of the economic and revenue forecast council.

13 (3) Each act of commission or omission which procures, aids or
14 abets in the violation shall be considered a violation under the
15 provisions of this section and subject to the same penalty. The
16 penalties provided in this section shall be imposed pursuant to RCW
17 43.21B.300.

18 (4) All penalties recovered under this section by the department
19 shall be paid into the state treasury and credited to the air pollution
20 control account established in RCW 70.94.015 or, if recovered by the
21 authority, shall be paid into the treasury of the authority and
22 credited to its funds. If a prior penalty for the same violation has
23 been paid to a local authority, the penalty imposed by the department
24 under subsection (1) of this section shall be reduced by the amount of
25 the payment.

26 (5) To secure the penalty incurred under this section, the state or
27 the authority shall have a lien on any vessel used or operated in
28 violation of this chapter which shall be enforced as provided in RCW
29 60.36.050.

30 (6) Public or private entities that are recipients or potential
31 recipients of department grants, whether for air quality related
32 activities or not, may have such grants rescinded or withheld by the
33 department for failure to comply with provisions of this chapter.

34 (7) In addition to other penalties provided by this chapter,
35 persons knowingly under-reporting emissions or other information used
36 to set fees, or persons required to pay emission or permit fees who are
37 more than ninety days late with such payments may be subject to a
38 penalty equal to three times the amount of the original fee owed.

1 (8) By January 1, 1992, the department shall develop rules for
2 excusing excess emissions from enforcement action if such excess
3 emissions are unavoidable. The rules shall specify the criteria and
4 procedures for the department and local air authorities to determine
5 whether a period of excess emissions is excusable in accordance with
6 the state implementation plan.

7 Sec. 24. RCW 70.105.080 and 1987 c 109 s 12 are each amended to
8 read as follows:

9 (1) Except as provided in sections 7 through 9 of this act, every
10 person who fails to comply with any provision of this chapter or of the
11 rules adopted thereunder shall be subjected to a penalty in an amount
12 of not more than ten thousand dollars per day for every such violation.
13 Each and every such violation shall be a separate and distinct offense.
14 In case of continuing violation, every day's continuance shall be a
15 separate and distinct violation. Every person who, through an act of
16 commission or omission, procures, aids, or abets in the violation shall
17 be considered to have violated the provisions of this section and shall
18 be subject to the penalty herein provided.

19 (2) The penalty provided for in this section shall be imposed
20 pursuant to the procedures in RCW 43.21B.300.

21 Sec. 25. RCW 70.132.050 and 1982 c 113 s 5 are each amended to
22 read as follows:

23 Except as provided in sections 7 through 9 of this act, any person
24 who violates any provision of this chapter or any rule adopted under
25 this chapter is subject to a civil penalty not exceeding five hundred
26 dollars for each violation. Each day of a continuing violation is a
27 separate violation.

28 Sec. 26. RCW 70.138.040 and 1987 c 528 s 4 are each amended to
29 read as follows:

30 (1) Except as provided in sections 7 through 9 of this act, any
31 person who violates any provision of a department regulation or
32 regulatory order relating to the management of special incinerator ash
33 shall incur in addition to any other penalty provided by law, a penalty
34 in an amount up to ten thousand dollars a day for every such violation.
35 Each and every such violation shall be a separate and distinct offense.
36 ((If-{In})) In case of continuing violation, every day's continuance

1 shall be a separate and distinct violation. Every person who, through
2 an act of commission or omission, procures, aids, or abets in the
3 violation shall be considered to have violated the provisions of this
4 section and shall be subject to the penalty herein provided.

5 (2) The penalty provided for in this section shall be imposed by a
6 notice in writing, either by certified mail with return receipt
7 requested or by personal service, to the person incurring the same from
8 the department, describing the violation with reasonable particularity.
9 Within fifteen days after the notice is received, the person incurring
10 the penalty may apply in writing to the department for the remission or
11 mitigation of such penalty. Upon receipt of the application, the
12 department may remit or mitigate the penalty upon whatever terms the
13 department in its discretion deems proper, giving consideration to the
14 degree of hazard associated with the violation, provided the department
15 deems such remission or mitigation to be in the best interests of
16 carrying out the purposes of this chapter. The department shall have
17 authority to ascertain the facts regarding all such applications in
18 such reasonable manner and under such rules as it may deem proper.

19 (3) Any penalty imposed by this section shall become due and
20 payable thirty days after receipt of a notice imposing the same unless
21 application for remission or mitigation is made or petition for review
22 by the hearings board is filed. When such an application for remission
23 or mitigation is made, any penalty incurred pursuant to this section
24 shall become due and payable thirty days after receipt of notice
25 setting forth the disposition of such application.

26 (4) If the amount of any penalty is not paid to the department
27 within thirty days after it becomes due and payable, the attorney
28 general, upon the request of the director, shall bring an action in the
29 name of the state of Washington in the superior court of Thurston
30 county, or any county in which such violator may do business, to
31 recover such penalty. In all such actions, the procedure and rules of
32 evidence shall be the same as an ordinary civil action except as
33 otherwise provided in this chapter.

34 Sec. 27. RCW 86.16.081 and 1987 c 523 s 8 are each amended to read
35 as follows:

36 (1) Except as provided in sections 7 through 9 of this act, the
37 attorney general or the attorney for the local government shall bring

1 such injunctive, declaratory, or other actions as are necessary to
2 ensure compliance with this chapter.

3 (2) Any person who fails to comply with this chapter shall also be
4 subject to a civil penalty not to exceed one thousand dollars for each
5 violation. Each violation or each day of noncompliance shall
6 constitute a separate violation.

7 (3) The penalty provided for in this section shall be imposed by a
8 notice in writing, either by certified mail with return receipt
9 requested or by personal service, to the person incurring the same from
10 the department or local government, describing the violation with
11 reasonable particularity and ordering the act or acts constituting the
12 violation or violations to cease and desist or, in appropriate cases,
13 requiring necessary corrective action to be taken within a specific and
14 reasonable time.

15 (4) Any penalty imposed pursuant to this section by the department
16 shall be subject to review by the pollution control hearings board.
17 Any penalty imposed pursuant to this section by local government shall
18 be subject to review by the local government legislative authority.
19 Any penalty jointly imposed by the department and local government
20 shall be appealed to the pollution control hearings board.

21 Sec. 28. RCW 90.03.600 and 1987 c 109 s 157 are each amended to
22 read as follows:

23 Except as provided in sections 7 through 9 of this act, the power
24 is granted to the department of ecology to levy civil penalties of up
25 to one hundred dollars per day for violation of any of the provisions
26 of this chapter and chapters 43.83B, 90.22, and 90.44 RCW, and rules,
27 permits, and similar documents and regulatory orders of the department
28 of ecology adopted or issued pursuant to such chapters. The procedures
29 of RCW 90.48.144 shall be applicable to all phases of the levying of a
30 penalty as well as review and appeal of the same.

31 Sec. 29. RCW 90.48.144 and 1992 c 73 s 27 are each amended to read
32 as follows:

33 Except as provided in sections 7 through 9 of this act, every
34 person who:

35 (1) Violates the terms or conditions of a waste discharge permit
36 issued pursuant to RCW 90.48.180 or 90.48.260 through 90.48.262, or

1 (2) Conducts a commercial or industrial operation or other point
2 source discharge operation without a waste discharge permit as required
3 by RCW 90.48.160 or 90.48.260 through 90.48.262, or

4 (3) Violates the provisions of RCW 90.48.080, or other sections of
5 this chapter or chapter 90.56 RCW or rules or orders adopted or issued
6 pursuant to either of those chapters, shall incur, in addition to any
7 other penalty as provided by law, a penalty in an amount of up to ten
8 thousand dollars a day for every such violation. Each and every such
9 violation shall be a separate and distinct offense, and in case of a
10 continuing violation, every day's continuance shall be and be deemed to
11 be a separate and distinct violation. Every act of commission or
12 omission which procures, aids or abets in the violation shall be
13 considered a violation under the provisions of this section and subject
14 to the penalty herein provided for. The penalty amount shall be set in
15 consideration of the previous history of the violator and the severity
16 of the violation's impact on public health and/or the environment in
17 addition to other relevant factors. The penalty herein provided for
18 shall be imposed pursuant to the procedures set forth in RCW
19 43.21B.300.

20 Sec. 30. RCW 90.58.210 and 1986 c 292 s 4 are each amended to read
21 as follows:

22 (1) Except as provided in sections 7 through 9 of this act, the
23 attorney general or the attorney for the local government shall bring
24 such injunctive, declaratory, or other actions as are necessary to
25 insure that no uses are made of the shorelines of the state in conflict
26 with the provisions and programs of this chapter, and to otherwise
27 enforce the provisions of this chapter.

28 (2) Any person who shall fail to conform to the terms of a permit
29 issued under this chapter or who shall undertake development on the
30 shorelines of the state without first obtaining any permit required
31 under this chapter shall also be subject to a civil penalty not to
32 exceed one thousand dollars for each violation. Each permit violation
33 or each day of continued development without a required permit shall
34 constitute a separate violation.

35 (3) The penalty provided for in this section shall be imposed by a
36 notice in writing, either by certified mail with return receipt
37 requested or by personal service, to the person incurring the same from
38 the department or local government, describing the violation with

1 reasonable particularity and ordering the act or acts constituting the
2 violation or violations to cease and desist or, in appropriate cases,
3 requiring necessary corrective action to be taken within a specific and
4 reasonable time.

5 (4) Within thirty days after the notice is received, the person
6 incurring the penalty may apply in writing to the department for
7 remission or mitigation of such penalty. Upon receipt of the
8 application, the department or local government may remit or mitigate
9 the penalty upon whatever terms the department or local government in
10 its discretion deems proper. Any penalty imposed pursuant to this
11 section by the department shall be subject to review by the shorelines
12 hearings board. Any penalty imposed pursuant to this section by local
13 government shall be subject to review by the local government
14 legislative authority. Any penalty jointly imposed by the department
15 and local government shall be appealed to the shorelines hearings
16 board.

17 Sec. 31. RCW 90.58.560 and 1983 c 138 s 2 are each amended to read
18 as follows:

19 (1) Except as provided in sections 7 through 9 of this act, a
20 person who violates RCW 90.58.550, or any rule adopted thereunder, is
21 subject to a penalty in an amount of up to five thousand dollars a day
22 for every such violation. Each and every such violation shall be a
23 separate and distinct offense, and in case of a continuing violation,
24 every day's continuance shall be and be deemed to be a separate and
25 distinct violation. Every act of commission or omission which
26 procures, aids or abets in the violation shall be considered a
27 violation under the provisions of this section and subject to the
28 penalty provided for in this section.

29 (2) The penalty shall be imposed by a notice in writing, either by
30 certified mail with return receipt requested or by personal service, to
31 the person incurring the penalty from the director or the director's
32 representative describing such violation with reasonable particularity.
33 The director or the director's representative may, upon written
34 application therefor received within fifteen days after notice imposing
35 any penalty is received by the person incurring the penalty, and when
36 deemed to carry out the purposes of this chapter, remit or mitigate any
37 penalty provided for in this section upon such terms as he or she deems
38 proper, and shall have authority to ascertain the facts upon all such

1 applications in such manner and under such regulations as he or she may
2 deem proper.

3 (3) Any person incurring any penalty under this section may appeal
4 the penalty to the hearings board as provided for in chapter 43.21B
5 RCW. Such appeals shall be filed within thirty days of receipt of
6 notice imposing any penalty unless an application for remission or
7 mitigation is made to the department. When an application for
8 remission or mitigation is made, such appeals shall be filed within
9 thirty days of receipt of notice from the director or the director's
10 representative setting forth the disposition of the application. Any
11 penalty imposed under this section shall become due and payable thirty
12 days after receipt of a notice imposing the same unless application for
13 remission or mitigation is made or an appeal is filed. When an
14 application for remission or mitigation is made, any penalty incurred
15 hereunder shall become due and payable thirty days after receipt of
16 notice setting forth the disposition of the application unless an
17 appeal is filed from such disposition. Whenever an appeal of any
18 penalty incurred under this section is filed, the penalty shall become
19 due and payable only upon completion of all review proceedings and the
20 issuance of a final order confirming the penalty in whole or in part.

21 (4) If the amount of any penalty is not paid to the department
22 within thirty days after it becomes due and payable, the attorney
23 general, upon the request of the director, shall bring an action in the
24 name of the state of Washington in the superior court of Thurston
25 county or of any county in which such violator may do business, to
26 recover such penalty. In all such actions the procedure and rules of
27 evidence shall be the same as an ordinary civil action except as
28 otherwise in this chapter provided. All penalties recovered under this
29 section shall be paid into the state treasury and credited to the
30 general fund.

31 Sec. 32. RCW 90.76.080 and 1989 c 346 s 9 are each amended to read
32 as follows:

33 (1) Except as provided in sections 7 through 9 of this act, a
34 person who fails to notify the department pursuant to tank notification
35 requirements or who submits false information is subject to a civil
36 penalty not to exceed five thousand dollars per violation.

1 (2) Except as provided in sections 7 through 9 of this act, a
2 person who violates this chapter is subject to a civil penalty not to
3 exceed five thousand dollars for each tank per day of violation.

4 NEW SECTION. Sec. 33. Sections 1 through 13, 15, 17, 18, and 20
5 of this act shall constitute a new chapter in Title 43 RCW.

--- END ---

APPENDIX F

Agency Approval for Flexibility

Appendix F

Agency Approval for Flexibility

Bill language for National Consensus Codes and External Certification

Add to sections: 43.22 (mobile home, FAS) 49.17 (WISHA), 19.28 (Electrical) 19.29 (Electrical)

Title: Act relating to increasing agency inspection approval flexibility.

National consensus codes

NEW SECTION. Sec. 1. A new section is added to chapter xx.xx RCW to read as follows:

For the purpose of carrying out inspections and approvals required under this chapter, the director may adopt rules that provide for:

(1) Approval of a product that is certified to meet a national consensus code if the national consensus code standards and specifications meet or exceed Washington standards and specifications; or

(2) Approval of plans, designs, manufacturing processes, and final products certified as meeting agency requirements or the equivalent by a professional who is licensed or certified in a state whose licensure or certification requirements meet or exceed Washington requirements.

External certification

NEW SECTION. Sec. 1. A new section is added to chapter xx.xx RCW to read as follows:

The director or the director's designee shall have the authority to rely on external professional certification of plans, designs, manufacturing processes, and final products, if :

(a) The professional is licensed or certified in his or her state; and

(b) The professional's state licensure or certification requirements are no less stringent than Washington's requirements.

Appendix G

Administrative Procedures Act Amendments

Includes:

- 1. Negotiated and Pilot Rule Making Amendment**
- 2. Standardizing Process for Petitions for Rule-Making**
- 3. Rule Adoption Amendments**
- 4. Expedited Rule Repeal Procedures**

Administrative Procedures Act Amendments
(See Key to Numbers at end of Bill)

1 AN ACT Relating to the rule-making process; amending RCW 34.05.310,
2 34.05.313, 34.05.325, 34.05.330, 34.04.375, and 19.85.030; adding new
3 sections to chapter 34.05 RCW; adding a new section to chapter 19.85
4 RCW; and repealing RCW 34.05.355.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. Sec. 1. A new section is added to chapter 34.05 RCW
7 under the subchapter heading Part III to read as follows:

8 (1) Before adopting a rule described in subsection (4) of this
9 section, an agency shall:

10 (a) Clearly state in detail the general goals and specific
11 objectives of the statute that the rule implements and the specific
12 objectives the agency seeks to achieve;

13 (b) Determine that the rule is needed to achieve the general goals
14 and specific objectives stated under (a) of this subsection, and
15 analyze alternatives to rule making and the consequences of not
16 adopting the rule;

17 (c) Determine that the probable benefits of the rule are greater
18 than its probable costs, taking into account both the qualitative and

1 quantitative benefits and costs and the specific directives of the
2 statute being implemented;

3 (d) Determine, after considering alternative versions of the rule
4 and the analysis required under (b) and (c) of this subsection, that
5 the rule being adopted is the least burdensome alternative for those
6 required to comply with the rule that will achieve the general goals
7 and the specific objectives stated under (a) of this subsection;

8 (e) Determine that the rule does not require those to whom it
9 applies to take an action that violates requirements of another federal
10 or state law;

11 (f) Coordinate the rule, to the maximum extent practicable, with
12 other federal, state, and local laws applicable to the same
13 circumstances and list, by citation, duplicative, inconsistent, or
14 conflicting laws;

15 (g) Determine that the rule does not impose more stringent
16 performance requirements on private entities than on public entities
17 unless required to do so by federal or state law;

18 (h) Determine if the rule differs from any applicable federal
19 regulation or statute and, if so, determine that the difference is
20 justified by the following:

21 (i) State statutory authority that explicitly allows the agency to
22 differ from federal standards; or

23 (ii) Substantial evidence that the difference is necessary to
24 achieve the specific objectives of the authorizing state statute;

25 (i) Describe how the agency will monitor and evaluate on an ongoing
26 basis whether the rule in fact achieves the general goals and specific
27 objectives stated under (a) of this subsection, including, to the
28 maximum extent practicable, the use of interim milestones to assess
29 progress and the use of objectively measurable outcomes;

30 (j) Describe how the agency will implement and enforce the rule and
31 encourage voluntary compliance with the rule;

32 (k) Describe which resources the agency intends to use to implement
33 the rule; and

34 (l) Document compliance with the requirements of this section in
35 the rule-making file.

36 (2) Before adopting a rule described in subsection (4) of this
37 section, an agency shall include in the rule-making file a written plan
38 that describes:

1 (a) The methods the agency will use in making a reasonable attempt
2 to notify those to whom the rule applies of the adoption of the rule
3 and how they may get more information on how to comply with the rule;
4 and

5 (b) How the agency will provide adequate sources of information and
6 technical assistance to those to whom the rule applies to assist them
7 in voluntarily complying with the rule.

8 (3) For rules implementing statutes enacted after the effective
9 date of this section, except emergency rules adopted pursuant to RCW
10 34.05.350, an agency may not rely solely on the statute's statement of
11 intent or purpose, or on the enabling provisions of the statute
12 establishing the agency, or on any combination of such provisions, for
13 its statutory authority to adopt the rule. An agency may use the
14 statement of intent or purpose or the agency enabling provisions to
15 interpret ambiguities in a statute's other provisions.

16 (4) (a) Subsections (1) and (2) of this section shall apply only to:

17 (i) Significant legislative rules of the departments of ecology,
18 labor and industries, and revenue, and the employment security
19 department, and to significant legislative rules of the department of
20 fish and wildlife implementing chapter 75.20 RCW; and

21 (ii) Legislative rules of any agency, if such rules are designated
22 as significant by the joint administrative rules review committee
23 pursuant to (d) of this subsection.

24 (b) Notwithstanding (a) of this subsection, subsections (1) and (2)
25 of this section shall not apply to:

26 (i) Emergency rules adopted pursuant to RCW 34.05.350;

27 (ii) Rules relating to internal governmental operations;

28 (iii) Rules adopting or incorporating by reference without material
29 change federal statutes or rules, rules of other Washington state
30 agencies, shoreline master programs, or, as referenced by Washington
31 state law, national consensus codes that generally establish industry
32 standards, as long as the material adopted or incorporated regulates
33 the same subject matter and conduct as the adopting or incorporating
34 rule;

35 (iv) Rules that simply correct typographical errors, make address
36 or name changes, clarify language without changing intent, or conform
37 language in the rule to mandated statutory changes or judicial
38 decisions, as long as the need for conformance is specific; or

1 (v) Rules that set or adjust fees or rates pursuant to legislative
2 standards.

3 (c) For purposes of this subsection:

4 (i) A "procedural rule" is a rule that establishes, alters, or
5 revokes (A) any procedure, practice, or requirement relating to any
6 agency hearings, or (B) any filing or related process requirement for
7 making application to an agency for a license.

8 (ii) An "interpretive rule" is a rule, the violation of which does
9 not subject a person to a penalty or sanction, that sets forth the
10 agency's interpretation of statutory provisions it administers.

11 (iii) A "legislative rule" includes a rule other than a procedural
12 or interpretive rule that (A) adopts substantive provisions of law
13 pursuant to delegated legislative authority, the violation of which
14 subjects a violator of such rule to a penalty or sanction, or (B)
15 establishes, alters, or revokes any qualification or standard for the
16 issuance, suspension, or revocation of a license.

17 (iv) A legislative rule is "significant" if it (A) adopts a new
18 policy or regulatory program, (B) establishes a new set of
19 qualifications or standards for the issuance, suspension, or revocation
20 of a license, (C) makes significant amendments to an existing policy or
21 regulatory program or existing qualification or standard for the
22 issuance, suspension, or revocation of a license that likely are to
23 generate controversy, (D) is designated as such by the agency, or (E)
24 is designated as such by the joint administrative rules review
25 committee pursuant to (d) of this subsection.

26 (d) At the time of filing a notice of proposed rule making pursuant
27 to RCW 34.05.320, an agency shall designate whether it considers the
28 rule contemplated to be developed a significant legislative rule and
29 shall so inform the joint administrative rules review committee of that
30 designation by providing to that committee a copy of that notice. The
31 joint administrative rules review committee by a majority vote within
32 thirty days of receipt of the notice may designate the contemplated
33 rule as significant and so inform the agency.

34 (e) An agency may voluntarily adopt a rule other than a significant
35 legislative rule under the factors listed in subsection (1) of this
36 section. Such a decision by the agency shall be included in the filing
37 of the notice of proposed rule making made pursuant to RCW 34.05.320.

38 (5) By January 31, 1996, and by January 31st of each even-numbered
39 year thereafter, the office of financial management, after consulting

1 with state agencies, and business, labor, and environmental
2 organizations, shall report to the governor and the legislature
3 regarding the effects of this section on the regulatory system in this
4 state. The report shall document:

5 (a) The rules proposed to which this section applied and to the
6 extent possible, how compliance with this section affected the
7 substance of the rule, if any, that the agency ultimately adopted;

8 (b) The costs incurred by state agencies in complying with this
9 section;

10 (c) Any legal action maintained based upon the alleged failure of
11 any agency to comply with this section, the costs to the state of such
12 action, and the result;

13 (d) The extent to which this section has resulted in the increased
14 inappropriate use by the agencies of policy statements and guidelines
15 in place of rules;

16 (e) The extent to which this section has adversely affected the
17 capacity of agencies to fulfill their legislatively prescribed mission;

18 (f) The extent to which this section has improved the acceptability
19 of state rules to those regulated; and

20 (g) Any other information considered by the office of financial
21 management to be useful in evaluating the effect of this section.

22 (6) This section expires June 30, 2000.

23 **2** NEW SECTION. Sec. 2. A new section is added to chapter 34.05 RCW
24 under the subchapter heading Part III to read as follows:

25 (1) Not later than June 30th of each year, each agency shall submit
26 to the code reviser, according to procedures and time lines established
27 by the code reviser, rules that it determines should be repealed by the
28 expedited repeal procedures provided for in this section. An agency
29 shall file a copy of a preproposal notice of intent, as provided in RCW
30 34.05.310(1), that identifies the rule as one that is proposed for
31 expedited repeal.

32 (2) An agency may propose the expedited repeal of rules meeting one
33 or more of the following criteria:

34 (a) The statute on which the rule is based has been repealed and
35 has not been replaced by another statute providing statutory authority
36 for the rule;

37 (b) The statute on which the rule is based has been declared
38 unconstitutional by a court with jurisdiction, there is a final

1 judgment, and no statute has been enacted to replace the
2 unconstitutional statute;

3 (c) The rule is no longer necessary because of changed
4 circumstances; or

5 (d) Other rules of the agency or of another agency govern the same
6 activity as the rule, making the rule redundant.

7 (3) The agency shall also send a copy of the preproposal notice of
8 intent to any person who has requested notification of copies of
9 proposals for the expedited repeal of rules or of agency rule making.
10 The preproposal notice of intent shall include a statement that any
11 person who objects to the repeal of the rule must file a written
12 objection to the repeal within thirty days after the preproposal notice
13 of intent is published. The notice of intent shall also include an
14 explanation of the reasons the agency believes the expedited repeal of
15 the rule is appropriate.

16 (4) The code reviser shall publish all rules proposed for expedited
17 repeal in a separate section of a regular edition of the Washington
18 state register or in a special edition of the Washington state
19 register. The publication shall be not later than July 31st, or in the
20 first register published after that date.

21 (5) Any person may file a written objection to the expedited repeal
22 of a rule. The notice shall be filed with the agency rules coordinator
23 within thirty days after the notice of intent has been published in the
24 Washington state register. The written objection need not state any
25 reason for objecting to the expedited repeal of the rule.

26 (6) If no written objections to the expedited repeal of a rule are
27 filed with the agency within thirty days after the preproposal notice
28 of intent is published, the agency may enter an order repealing the
29 rule without further notice or an opportunity for a public hearing.
30 The order shall be published in the manner required by this chapter for
31 any other order of the agency adopting, amending, or repealing a rule.
32 If a written objection to the expedited repeal of the rule is filed
33 with the agency within thirty days after the notice of intent has been
34 published, the preproposal notice of intent published pursuant to this
35 section shall be considered a preproposal notice of intent for the
36 purposes of RCW 34.05.310(1) and the agency may initiate rule adoption
37 proceedings in accordance with the provisions of this chapter.

1 Sec. 3. RCW 34.05.310 and 1994 c 249 s 1 are each amended to read
2 as follows:

3 (1) Unless an agency makes a determination pursuant to subsection
4 (3) of this section, to meet the intent of providing greater public
5 access to administrative rule making and to promote consensus among
6 interested parties, ((agencies)) it shall solicit comments from the
7 public on a subject of possible rule making before publication of a
8 notice of proposed rule adoption under RCW 34.05.320. The agency shall
9 prepare a statement of intent that:

10 (a) States the specific statutory authority for the new rule;

11 (b) Identifies the reasons the new rule is needed or the issue the
12 agency is exploring to determine if a new rule is needed;

13 (c) Identifies the goals of the new rule;

14 (d) Describes the process by which the rule will be developed,
15 including, but not limited to, negotiated rule making((7)) or pilot
16 rule making((, ~~or agency study~~)); and

17 (e) Specifies the process by which interested parties can
18 effectively participate in the formulation of the new rule.

19 The statement of intent shall be filed with the code reviser for
20 publication in the state register and shall be ((sent)) provided to any
21 party that has requested receipt of the agency's statements of intent.

22 (2) Agencies are encouraged to develop and use new procedures for
23 reaching agreement among interested parties before publication of
24 notice and the adoption hearing on a proposed rule. Examples of new
25 procedures include, but are not limited to:

26 (a) Negotiated rule making which ((includes:

27 *~~(i) Identifying individuals and organizations that have a~~*
28 *~~recognized interest in or will be significantly affected by the~~*
29 *~~adoption of the proposed rule;~~*

30 *~~(ii) Soliciting participation by persons who are capable, willing,~~*
31 *~~and appropriately authorized to enter into such negotiations;~~*

32 *~~(iii) Assuring that participants fully recognize the consequences~~*
33 *~~of not participating in the process, are committed to negotiate in good~~*
34 *~~faith, and recognize the alternatives available to other parties;~~*

35 *~~(iv) Establishing guidelines to encourage consideration of all~~*
36 *~~pertinent issues, to set reasonable completion deadlines, and to~~*
37 *~~provide fair and objective settlement of disputes that may arise;~~*

1 ~~(v) Agreeing on a reasonable time period during which the agency~~
2 ~~will be bound to the rule resulting from the negotiations without~~
3 ~~substantive amendment; and~~

4 ~~(vi) Providing a mechanism by which one or more parties may~~
5 ~~withdraw from the process or the negotiations may be terminated if it~~
6 ~~appears that consensus cannot be reached on a draft rule that~~
7 ~~accommodates the needs of the agency, interested parties, and the~~
8 ~~general public and conforms to the legislative intent of the statute~~
9 ~~that the rule is intended to implement)) means a process by which~~
10 representatives of an agency and of the interests who are affected by
11 a subject of rule making seek to reach consensus on the terms of the
12 proposed rule and on the process by which it is negotiated; and

13 (b) Pilot rule making which includes testing the ~~((draft of a~~
14 ~~proposed rule)) feasibility of complying with or administering new~~
15 draft rules or draft revisions to adopted rules through the use of
16 volunteer pilot ~~((study))~~ groups in various areas and circumstances, as
17 provided in RCW 34.05.313.

18 (3) ~~((a) An agency must make a determination whether negotiated~~
19 ~~rule making, pilot rule making, or another process for generating~~
20 ~~participation from interested parties prior to development of the rule~~
21 ~~is appropriate.~~

22 ~~(b) An agency must))~~ If the agency determines that an opportunity
23 for interested parties to participate in the rule-making process before
24 publication of the proposed rule is not necessary to achieve the
25 objectives of subsection (1) of this section, not later than the date
26 it publishes the proposed rule for comment pursuant to RCW 34.05.320 it
27 shall include ((a written justification)) in the rule-making file ((if
28 ~~an opportunity for interested parties to participate in the rule making~~
29 ~~process prior to publication of the proposed rule has not been~~
30 ~~provided)) a written statement explaining the reasons for not providing~~
31 such an opportunity and shall mail the statement to any person who has
32 requested copies of the agency's statements of intent.

33 (4) The provisions of this section do not apply to:

34 (a) The adoption of an emergency rule pursuant to RCW 34.05.350;

35 (b) The adoption of a rule relating to internal governmental
36 operations;

37 (c) The amendment of a rule that had adopted or incorporated by
38 reference without material change federal statutes or rules, rules of
39 other Washington state agencies, laws or rules of local governments, or

1 national consensus codes that generally establish industry standards,
2 and that simply revise the version of such adopted or incorporated
3 material; or

4 (d) The adoption of a rule that simply corrects typographical
5 errors, makes address or name changes, clarifies language without
6 changing intent, or conforms language in the rule to statutory changes
7 or judicial decisions.

5 8 Sec. 4. RCW 34.05.313 and 1993 c 202 s 4 are each amended to read
9 as follows:

10 ~~((If,))~~ (1) During the development of a rule or after its adoption,
11 an agency ~~((determines that implementation may produce unreasonable~~
12 ~~economic, procedural, or technical burdens, agencies are encouraged~~
13 ~~to))~~ may develop methods for measuring or testing the feasibility of
14 ~~((compliance))~~ complying with or administering the rule ~~((, including~~
15 ~~the use of voluntary pilot study groups))~~ and for identifying simple,
16 efficient, and economical alternatives for achieving the goal of the
17 rule. ~~((Measuring and testing methods should emphasize))~~ A pilot
18 project shall include public notice, participation by ~~((persons who~~
19 ~~have a recognized interest in or are significantly affected by the~~
20 ~~adoption of the proposed rule))~~ volunteers who are or will be subject
21 to the rule, a high level of involvement from agency management,
22 ~~((consensus on issues and procedures among participants in the pilot~~
23 ~~group, assurance of fairness, and))~~ reasonable completion dates, and a
24 process by which one or more parties may withdraw from the process or
25 the process may be terminated ~~((if consensus cannot be reached on the~~
26 ~~rule))~~. Volunteers who agree to test a rule and attempt to meet the
27 requirements of the draft rule, to report periodically to the proposing
28 agency on the extent of their ability to meet the requirements of the
29 draft rule, and to make recommendations for improving the draft rule
30 shall not be obligated to comply fully with the rule being tested nor
31 be subject to any enforcement action or other sanction for failing to
32 comply with the requirements of the draft rule.

33 (2) An agency conducting a pilot rule project authorized under
34 subsection (1) of this section may waive one or more provisions of
35 agency rules otherwise applicable to participants in such a pilot
36 project if the agency first determines that such a waiver is in the
37 public interest and necessary to conduct the project. Such a waiver

1 may be only for a stated period of time, not to exceed the duration of
2 the project.

3 (3) The findings of the pilot project should be widely shared and,
4 where appropriate, adopted as amendments to the rule.

5 (4) If an agency conducts a pilot rule project in lieu of meeting
6 the requirements of the regulatory fairness act, chapter 19.85 RCW, the
7 agency shall ensure the following conditions are met:

8 (a) If over ten small businesses are affected, there shall be at
9 least ten small businesses in the test group and at least one-half of
10 the volunteers participating in the pilot test group shall be small
11 businesses.

12 (b) (i) If there are at least one hundred businesses affected, the
13 participation by small businesses in the test group shall be as
14 follows:

15 (A) Not less than twenty percent of the small businesses must
16 employ twenty-six to fifty employees;

17 (B) Not less than twenty percent of the small businesses must
18 employ eleven to twenty-six employees, and

19 (C) Not less than twenty percent of the small businesses must
20 employ zero to ten employees.

21 (ii) If there do not exist a sufficient number of small businesses
22 in each size category set forth in (b) (i) of this subsection willing to
23 participate in the pilot project to meet the minimum requirements of
24 that subsection, then the agency must comply with this section to the
25 maximum extent practicable.

26 (c) The agency may not terminate the pilot project before
27 completion.

28 (d) Before filing the notice of proposed rule making pursuant to
29 RCW 34.05.320, the agency must prepare a report of the pilot rule
30 project that includes:

31 (i) A description of the difficulties small businesses had in
32 complying with the pilot rule;

33 (ii) A list of the recommended revisions to the rule to make
34 compliance with the rule easier or to reduce the cost of compliance
35 with the rule by the small businesses participating in the pilot rule
36 project; and

37 (iii) A written statement explaining the options it considered to
38 resolve each of the difficulties described and a statement explaining

1 its reasons for not including a recommendation by the pilot test group
2 to revise the rule.

3 Sec. 5. RCW 34.05.325 and 1994 c 249 s 7 are each amended to read
4 as follows:

5 (1) The agency shall make a good faith effort to insure that the
6 information on the proposed rule published pursuant to RCW 34.05.320
7 accurately reflects the rule to be presented and considered at the oral
8 hearing on the rule. Written comment about a proposed rule, including
9 supporting data, shall be accepted by an agency if received no later
10 than the time and date specified in the notice, or such later time and
11 date established at the rule-making hearing.

12 (2) The agency shall provide an opportunity for oral comment to be
13 received by the agency in a rule-making hearing.

14 (3) If the agency possesses equipment capable of receiving
15 telefacsimile transmissions or recorded telephonic communications, the
16 agency may provide in its notice of hearing filed under RCW 34.05.320
17 that interested parties may comment on proposed rules by these means.
18 If the agency chooses to receive comments by these means, the notice of
19 hearing shall provide instructions for making such comments, including,
20 but not limited to, appropriate telephone numbers to be used; the date
21 and time by which comments must be received; required methods to verify
22 the receipt and authenticity of the comments; and any limitations on
23 the number of pages for telefacsimile transmission comments and on the
24 minutes of tape recorded comments. The agency shall accept comments
25 received by these means for inclusion in the official record if the
26 comments are made in accordance with the agency's instructions.

27 (4) The agency head, a member of the agency head, or a presiding
28 officer designated by the agency head shall preside at the rule-making
29 hearing. Rule-making hearings shall be open to the public. The agency
30 shall cause a record to be made of the hearing by stenographic,
31 mechanical, or electronic means. Unless the agency head presides or is
32 present at substantially all the hearings, the presiding official shall
33 prepare a memorandum for consideration by the agency head, summarizing
34 the contents of the presentations made at the rule-making hearing. The
35 summarizing memorandum is a public document and shall be made available
36 to any person in accordance with chapter 42.17 RCW.

37 (5) Rule-making hearings are legislative in character and shall be
38 reasonably conducted by the presiding official to afford interested

1 persons the opportunity to present comment. Rule-making hearings may
2 be continued to a later time and place established on the record
3 without publication of further notice under RCW 34.05.320.

6 4 ~~((Before the adoption of a final rule))~~ (a) Except as otherwise
5 provided in (c) of this subsection, at the time it files an adopted
6 rule with the code reviser, or within thirty days thereafter, an agency
7 shall prepare a ~~((written summary of))~~ concise explanatory statement of
8 the rule:

9 (i) Identifying the agency's reasons for adopting the rule;

10 (ii) Describing differences between the text of the proposed rule
11 as published in the register and the text of the rule as adopted, other
12 than editing changes, stating the reasons for differences; and

13 (iii) Summarizing all comments received regarding the proposed
14 rule, and ~~((a substantive response))~~ responding to the comments by
15 category or subject matter, indicating how the final rule reflects
16 agency consideration of the comments, or why it fails to do so.

17 (b) The agency shall provide the ~~((written summary and response))~~
18 concise explanatory statement to any person upon request or from whom
19 the agency received comment.

20 (c) This subsection does not apply to rules described in RCW
21 34.05.310(4).

22 Sec. 6. RCW 34.05.330 and 1988 c 288 s 305 are each amended to
23 read as follows:

7 24 (1) Any person may petition an agency requesting the adoption,
25 amendment, or repeal of any rule. ~~((Each agency may))~~ The office of
26 financial management shall prescribe by rule the ~~((form))~~ format for
27 such petitions and the procedure for their submission, consideration,
28 and disposition and provide a standard form that may be used to
29 petition any agency. Within sixty days after submission of a petition,
30 the agency shall ~~((+1+))~~ either (a) deny the petition in writing,
31 stating (i) its reasons for the denial, specifically addressing the
32 concerns raised by the petitioner, and, where appropriate, (ii) the
33 alternative means by which it will address the concerns raised by the
34 petitioner, or ~~((+2+))~~ (b) initiate rule-making proceedings in
35 accordance with this chapter.

36 (2) If an agency denies a petition to repeal or amend a rule
37 submitted under subsection (1) of this section, the petitioner, within
38 thirty days of the denial, may appeal the denial to the governor. The

1 governor shall immediately file notice of the appeal with the code
2 reviser for publication in the Washington state register. Within
3 forty-five days after receiving the appeal, the governor shall either
4 (a) deny the petition in writing, stating (i) his or her reasons for
5 the denial, specifically addressing the concerns raised by the
6 petitioner, and, (ii) where appropriate, the alternative means by which
7 he or she will address the concerns raised by the petitioner; (b) for
8 agencies listed in RCW 43.17.010, direct the agency to initiate rule-
9 making proceedings in accordance with this chapter; or (c) for agencies
10 not listed in RCW 43.17.010, recommend that the agency initiate rule-
11 making proceedings in accordance with this chapter. The governor's
12 response to the appeal shall be published in the Washington state
13 register and copies shall be submitted to the chief clerk of the house
14 of representatives and the secretary of the senate.

15 (3) In petitioning for repeal or amendment of a rule under this
16 section, a person is encouraged to address, among other concerns:

17 (a) Whether the rule is authorized;

18 (b) Whether the rule is needed;

19 (c) Whether the rule conflicts with or duplicates other federal,
20 state, or local laws;

21 (d) Whether alternatives to the rule exist that will serve the same
22 purpose at less cost;

23 (e) Whether the rule applies differently to public and private
24 entities;

25 (f) Whether the rule serves the purposes for which it was adopted;

26 (g) Whether the costs imposed by the rule are unreasonable; and

27 (h) Whether the rule is clearly and simply stated.

28 (4) The business assistance center and the office of financial
29 management shall coordinate efforts among agencies to inform the public
30 about the existence of this rules review process.

31 (5) The office of financial management shall initiate the rule
32 making required by subsection (1) of this section by September 1, 1995.

33 **8** Sec. 7. RCW 34.04.375 and 1988 c 288 s 314 are each amended to
34 read as follows:

35 (1) No rule proposed after July 1, 1989, is valid unless it is
36 adopted in substantial compliance with RCW 34.05.310 through 34.05.395.
37 Inadvertent failure to mail notice of a proposed rule adoption to any
38 person as required by RCW 34.05.320(3) does not invalidate a rule.

1 ~~((No action based upon this section may be maintained to contest the~~
2 ~~validity of any rule unless it is commenced within two years after the~~
3 ~~effective date of the rule.))~~

4 (2) (a) Except as otherwise provided in (b) of this subsection, an
5 action based upon this section to contest the validity of a rule shall
6 be commenced within two years after the effective date of the rule.

7 (b) An action based upon a claim that an agency failed to comply
8 with section 1 of this act shall be commenced within ninety days after
9 the effective date of the rule being contested. Nothing in this
10 subsection limits the authority of a court to review a rule under RCW
11 34.05.570(2).

9 12 NEW SECTION. Sec. 8. A new section is added to chapter 19.85 RCW
13 to read as follows:

14 (1) Unless an agency receives a written objection to the expedited
15 repeal of a rule, this chapter does not apply to a rule proposed for
16 expedited repeal pursuant to section 2 of this act. If an agency
17 receives a written objection to expedited repeal of the rule, this
18 chapter applies to the rule-making proceeding.

19 (2) This chapter does not apply to the adoption of a rule described
20 in RCW 34.05.310(4).

21 (3) An agency is not required to prepare a separate statement under
22 this chapter if it prepared an analysis under section 1(1) of this act
23 that makes the findings required and includes the mitigation required
24 by this chapter and designates that part of the analysis that meets the
25 requirements of this chapter.

26 Sec. 9. RCW 19.85.030 and 1994 c 249 s 11 are each amended to read
27 as follows:

28 (1) In the adoption of any rule pursuant to RCW 34.05.320 that will
29 impose more than minor costs on more than twenty percent of all
30 industries, or more than ten percent of any one industry, the adopting
31 agency:

32 (a) Shall reduce the economic impact of the rule on small business
33 by doing one or more of the following when it is legal and feasible in
34 meeting the stated objective of the statutes which are the basis of the
35 proposed rule:

36 (i) Establish differing compliance or reporting requirements or
37 timetables for small businesses;

1 (ii) Clarify, consolidate, or simplify the compliance and reporting
2 requirements under the rule for small businesses;

3 (iii) Establish performance rather than design standards;

4 (iv) Exempt small businesses from any or all requirements of the
5 rule;

6 (v) Reduce or modify fine schedules for noncompliance; and

7 (vi) Other mitigation techniques;

8 (b) Before filing notice of a proposed rule, shall either:

9 (i) Prepare a small business economic impact statement in
10 accordance with RCW 19.85.040 and file notice of how the person can
11 obtain the statement with the code reviser as part of the notice
12 required under RCW 34.05.320; or

10 13 (ii) Complete the pilot rule process as defined by RCW 34.05.313
14 before filing the notice of a proposed rule.

15 (2) If requested to do so by a majority vote of the joint
16 administrative rules review committee within thirty days after notice
17 of the proposed rule is published in the state register, an agency
18 shall prepare a small business economic impact statement on the
19 proposed rule before adoption of the rule. Upon completion, an agency
20 shall provide a copy of the small business economic impact statement to
21 any person requesting it.

22 (3) An agency may request assistance from the business assistance
23 center in the preparation of the small business economic impact
24 statement.

25 (4) The business assistance center shall develop guidelines to
26 assist agencies in determining whether a proposed rule will impose more
27 than minor costs on businesses in an industry and therefore require
28 preparation of a small business economic impact statement. The
29 business assistance center may review an agency determination that a
30 proposed rule will not impose such costs, and shall advise the joint
31 administrative rules review committee on disputes involving agency
32 determinations under this section.

11 33 NEW SECTION. Sec. 10. RCW 34.05.355 and 1994 c 249 s 8 & 1988 c
34 288 s 310 are each repealed.

--- END ---

Administrative Procedures Act Amendments Key

- 1. Rule Adoption Factors (see page 30)**
- 2. Expedited Rule Repeal (see page 29)**
- 3. Negotiated Rule-making (see page 19)**
- 4. Simplification of Rule-making Procedures (see page 30)**
- 5. Pilot Rule-making (see page 21)**
- 6. Simplification of Rule-making Procedures (see page 30)**
- 7. Petition Procedure for Rules Review (see page 26)**
- 8. Rule Adoption Factors (see page 30)**
- 9. Simplification of Rule-making Procedures (see page 30)**
- 10. Pilot Rule-making (see page 21)**
- 11. Simplification of Rule-making Procedures**

Appendix H

1. Petition for Repeal or Amendment of an Administrative Rule

PETITION
for
Repeal or Amendment of an Administrative Rule

The Washington State Legislature has adopted a standardized form for members of the public who wish to petition a state agency to amend or repeal an administrative rule (regulation). Full consideration will be given to a petitioner's request based on the information provided.

I (we) request that the following rule be repealed or amended:

Title of Rule

WAC

Agency responsible for administering the rule

My reasons for requesting a review of this rule are (check all that apply):

- ☐ The rule is not authorized. The authorizing statute has been repealed or revised, or other statutes have been enacted which changed the original authorization.

Please describe: _____

- ☐ The rule is not necessary. Describe any social economic, environmental or other circumstances which have changed to the extent that the rule is no longer necessary:

- ☐ The rule conflicts with or duplicates another federal, state or local rule.

Title of conflicting or duplicating rule

Agency responsible

Please explain how the conflict or duplication occurs: _____

- ☐ Alternatives to the rules exist that could serve the same purpose at lower cost.

Please explain: _____

- ☐ The rule is applied differently to public and private entities. Please explain:

- ☐ The rule does not serve the purposes for which it was adopted. Please explain:

- ☐ The costs imposed by the rules are unreasonable. Please explain: _____

- ☐ The rule is clearly and simply stated. Please attach an example of how the rule is not clear.

- ☐ Other. Please list any other concerns you may have with the rule that lead you to believe that it should be amended or repealed: _____

Signature of petitioner

Date

Name (please print)

Street Address

P.O. Box

City, State, Zip+4

() _____
Telephone